FMA

Finanzmarktaufsicht
Liechtenstein

FMA Instruction 2018/7 – General and sector-specific interpretation of due diligence law

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	Article 2(1) SPG
	Article 3 SPG
	Articles 5 to 9 and 11(4) SPG
	Article 14 SPG in conjunction with Article 24 SPV
	Article 14(4) SPG in conjunction with Article 24a SPV
	Article 20 SPG in conjunction with Articles 27 to 29 SPV
	Article 21 SPG in conjunction with Articles 31 to 36 SPV
	Article 22(1) SPG
	Article 28(3) SPG
	Articles 6 to 11a, 18(2), 20, 22 SPV
	Article 14 SPV
	Article 21(2) SPV

Landstrasse 109 • Postfach 279 • 9490 Vaduz • Liechtenstein
Telefon +423 236 73 73 • Telefax +423 236 73 74 • www.fma-li.li • info@fma-li.li

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I. General Part

1. General provisions

Based on Article 28(3) of the Law on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (Due Diligence Act, SPG), the Financial Market Authority (FMA) may issue instructions interpreting the provisions of the SPG and the Ordinance on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (Due Diligence Ordinance, SPV) as appropriate to each industry sector.

The content of this Instruction reflects the interpretation and practice of the FMA in connection with the exercise of due diligence and was prepared in cooperation with the industry associations.

The General Part contains provisions which in principle apply to all persons subject to due diligence. The Special Part sets out the sector-specific details. Both parts form an integrated document and must accordingly be read together.

2. Terminology

- **Identification** refers to the identification and verification of a person's identity by means of documents with probative value (Articles 6 et seq. SPG).
- A **professional basis** exists if, taking account of the overall view of criteria such as frequency, remuneration, amount of remuneration where applicable, amount of assets concerned, type of contract, contracting party, number of transactions, etc., it can no longer be assumed that the service is performed on a courtesy basis. For the qualification under due diligence law as a service performed on a professional basis, it is irrelevant whether the activity is carried out on a self-employed or non-self-employed basis.
- **Documents with probative value**
  - for natural persons (Article 7(1) SPV):

    Valid official identity document bearing a photography, specifically a travel document (passport, identity card) or driving license. A travel document is valid if it entitles the holder to enter the Principality of Liechtenstein at the time of identification and verification of identity.

    See the list of the Swiss State Secretariat for Migration:

    https://www.sem.admin.ch/dam/data/sem/rechtsgrundlagen/weisungen/visa/bfm/bfm-anh01-liste1-e.pdf

    If the contracting party is unable to produce such a document from his or her home state, the contracting party must obtain a confirmation of identity from the competent authorities of the place of residence (Article 7(2) SPV).
  - for legal entities (Article 8 SPV):

    Documents with probative value include extracts from the Commercial Register, official certificates issued in Liechtenstein, etc., which are not more than twelve months old (Article 10(3) SPV).
- A **business relationship** is any business, professional or commercial relationship which is conducted in connection with the professional activities of the person subject to due diligence and which is expected, at the time when the contact is established, to exist for a certain duration in time (Article 2(1)(c) SPG).

  For example, the term "business relationship" is defined in FMA Communication 2017/3 on electronic reporting in accordance with due diligence law on the basis of:
  - the administered legal entity;

- the insurance policy; or
- of the account master.

- **Occasional transactions** are operations and transactions, especially money exchange, cash subscription of medium-term notes and bonds, cash buying or selling of bearer securities and cashing of cheques, unless the operation or transaction is carried out via an existing account or custody account in the name of the customer (Article 2(1)(d) SPG).

  The term "account" is not limited to bank accounts.

  If these operations or transactions are effected within the framework of a business relationship as referred to in Article 2(1)(c) SPG, they are not considered occasional transactions. In this case, the provisions of due diligence law governing the (permanent) business relationship apply.

- A **third country** is a state that is not a member of the European Economic Area (EEA) (Article 2(1)(i) SPG), such as Switzerland.

- **Members of the executive body** are natural persons who are members of the management, the board of directors, the supervisory board, the managing board or persons in a comparable function (Article 2(1)(r) SPG). "Persons in a comparable function" means only those persons who have the same hierarchical status as the members of the management, the board of directors, etc. and have powers comparable to those of the members of the management, the board of directors, etc.

- The **responsible member of the executive body** for the purposes of Article 22(1) SPG is a member of the executive body as referred to in Article 2(1)(r) SPG who is responsible for compliance with the SPG and the SPV.

- The **contracting party** is in general the natural or legal person who places the order to establish the business relationship or to carry out the occasional transaction. For example, in the case of a (bank) account, this is the (legal) person in whose name the account is established; in the case of the formation of a foundation, this is the (legal) person who places the formation order. After the formation of a legal entity, the legal entity itself, represented by its bodies, is generally considered the contracting party.

3. Addressees (Article 3 SPG)

The SPG and the SPV apply to persons subject to due diligence. Article 3(1) to (2) SPG sets out who is covered by this term.

Some professions, such as professional trustees, real estate agents, persons trading in goods, and members of tax consultancy professions and external bookkeepers, are not in themselves to be considered to be subject to due diligence, but rather only when they carry out certain activities. More detailed provisions can be found in the Special Part applicable to the industry sector in question.

4. Territorial scope of application

The SPG and the SPV must always be applied if a person subject to due diligence as referred to in Article 3(1) or (2) SPG acts within the scope of Article 5(2) SPG or has a doubt or suspicion. The principle of territoriality applies as a general rule. Under that principle, Liechtenstein due diligence legislation is always applicable if activities within the meaning of Article 3(1) SPG are carried out in or from Liechtenstein.

5. Due diligence obligations

5.1 Scope and application of due diligence (Article 5(1) SPG)

The person subject to due diligence must in principle meet all due diligence obligations. According to Article 5(1) SPG, these are:

- identification and verification of the identity of the contracting party (Article 6 SPG);
- identification and verification of the identity of the beneficial owner (Article 7 SPG);
- identification and verification of the identity of the recipient of the distribution of legal entities established on a discretionary basis and the beneficiary of life insurance policies and other insurances with investment-related objectives (Articles 7a and 7b SPG);
- establishment of a business profile (Article 8 SPG); and
- supervision of the business relationship at a level that is commensurate with the risk (Article 9 SPG).

The extent to which due diligence obligations must be met depends on the risk inherent in the individual business relationship or occasional transaction. Under Article 10 SPG, simplified due diligence may be applied in cases of minor risk with reference to money laundering, organised crime and terrorist financing. In the event of increased or high risks within the meaning of Article 11 SPG, correspondingly enhanced due diligence must be applied. This is referred to as application of the risk-based approach, which is described in more detail in FMA Guideline 2013/1 on the risk-based approach under due diligence law.

The due diligence obligations referred to in Article 5 SPG represent only part of the obligations to be met under the SPG and the SPV. Other obligations in particular include those regarding the documentation of compliance with due diligence obligations, internal organisation, and the obligation to report to the Financial Intelligence Unit (FIU).

5.2 Identification and verification of the identity of the contracting party (Article 6 SPG; Articles 6 et seq. SPV)

The contracting party must be identified and verified both in a business relationship and in an occasional transaction. If, over the course of the business relationship, doubts arise concerning the identity of the contracting party, the persons subject to due diligence must repeat the identification and verification of the identity of the contracting party.

For natural persons, one-time identification is sufficient for all subsequent business relationships. The identification document, i.e. the document with probative value (confirmatory document), must continue to be valid within the meaning of Article 7 SPV for all business relationships subsequently entered into.

In all cases, the completeness of the due diligence files must be ensured so that, in particular, changes to the documentation can also be traced. It is permissible for documents relevant to several due diligence files, such as a copy of the original or of the certified copy of the confirmatory document, to be kept in a central location, provided that the central safekeeping is clearly evident from the due diligence file in question.

If the contracting party is a legal entity, the documents may not be more than twelve months old at the time of establishment of each new business relationship in order to ensure that they reflect the current circumstances (Article 10(3) SPV). However, here again it is sufficient to obtain the documentation only once for several business relationships, provided that the documents are not older than twelve months. The above provisions regarding the completeness of the documentation and central safekeeping apply here *mutatis mutandis*.

The information to be obtained and recorded under Article 6(1)(b) SPV includes the names of the bodies or trustees acting formally on behalf of the legal entity in the relationship with the person subject to due diligence. But only those persons need to be identified who specifically interact with the person subject to due diligence in the context of establishing the business relationship and represent the contracting party (e.g. those bodies

which make the written declaration for the legal entity under Article 11 SPV) and not, for example, the entire management.

The persons subject to due diligence must ascertain that each person purporting to act on behalf of the contracting party is authorised to do so. This can be done, for example, by inspecting a power of attorney or an extract from the Commercial Register. The persons subject to due diligence must establish the identity of such persons by documentation of the information referred to in Article 6(1)(a) SPV and verify such particulars by consulting a supporting document (original or certified copy) or by means of signature authentication (Article 9 SPV).

Copies of the original or of the authenticated copy of the supporting documents must be made, including a conformation under Article 10(2) SPV that the original or authenticated copy has been inspected. The copies must then be signed and dated and placed in the due diligence file (subject to central safekeeping).

The person subject to due diligence must sign and date the documentation used to identify and verify the identity of the contracting party. The use of an individualised stamp, including particulars such as the employee's abbreviation and initials, also counts as a signature.

The signature may also be executed by an employee of the person subject to due diligence, provided that such employee is authorised to do so in accordance with the internal organisation of the person subject to due diligence (e.g. by internal instructions). As a rule, the documentation should be signed by the employee who enters into the business relationship or is significantly involved in this process. If questions about the documentation arise during an inspection, the FMA may seek to establish contact with this employee. It must therefore be ensured that the signatory of the documentation is identifiable by an external third party (e.g. by stating the name in legible writing or typescript below the signature).

Another possibility is electronically "signed" documentation, in which case the authenticity of the "signature" must be guaranteed. This means that a signature cannot be executed by more than one person, but only by the signing employee or person subject to due diligence. Ways of circumventing this requirement must be excluded as far as possible. This also includes scenarios in which systemic precautions are used to automatically and immutably document by which employee a document was verified and when.

In all the above-mentioned cases, the signatory of the documentation must be identifiable by an external third party.

According to Article 9 SPV, confirmations of authenticity may be issued by a branch or group member company of the person subject to due diligence or by another person subject to due diligence referred to in Article 3(1)(a) to (i) SPG, a professional trustee, a lawyer, an auditor or an asset manager subject to the EU Anti-Money Laundering Directive or equivalent regulation and supervision (see Section IV Annex 1 of this Instruction). A confirmation of authenticity issued by a notary or other public body that customarily issues such confirmations of authenticity also meets the legal requirements.

The identification and verification of the identity of the contracting party may also be accomplished through the measures set out in the instruction on safeguards pursuant to Article 14 SPV.

5.3 Identification and verification of the identity of the beneficial owner and the recipients of a distribution (Articles 7 et seq. SPG; Articles 11 et seq. SPV)

The identification and verification of the identity of the beneficial owner is divided into two parts as follows:

- 1st step: Identification and verification of the identity of the beneficial owner
- 2nd step: Establishment and verification of beneficial ownership

The first step concerns establishment of the identity of the beneficial owner by the person subject to due diligence (Article 7(1) SPG). The beneficial owner must be identified and verified both in a business relationship and in an occasional transaction. For this purpose, the person subject to due diligence must obtain and record the information referred to in Article 6(1)(a) SPV and verify it through risk-based and adequate measures (e.g. by obtaining a copy of the passport). In the case of low risk, it is possible to dispense

with the collection of documents with probative value for the purpose of Article 7 SPV. The documentation must be dated. Note that the beneficial owner must be a natural person, subject to a few exceptions set out in Article 3(1)(b)(2) and 3(1)(d) to (i) and Article 22b(3) SPV.

In principle, the beneficial owner is the natural person on whose initiative or in whose interest a transaction or activity is carried out or a business relationship is ultimately constituted. In the case of legal entities, this is also the natural person in whose ownership or under whose control the legal entity ultimately is situated (Article 2(1)(e) SPG). A more specific definition is provided in Article 3 SPV. For detailed questions regarding the determination of the beneficial owner, FMA Communication 2015/7 on questions relating to the identification of the beneficial owner under the Due Diligence Act must be consulted.

In addition to identifying and verifying the identity of the beneficial owner, the persons subject to due diligence must take risk-based and adequate measures to satisfy themselves in a second step that this person is actually the beneficial owner. In this context, the focus is therefore not on identity as such, but on the verification of beneficial ownership. In the case of a legal entity, this includes risk-based and adequate measures to determine the ownership and control structure.

The risk inherent in the business relationship or transaction determines the extent of the verification of beneficial ownership. In the case of business relationships and transactions with low risks, it is generally sufficient if the details of the beneficial owner are confirmed by signature in the form of a written declaration by the contracting party (Article 11(2) SPV). If normal, increased, or high risks are identified, in addition to the written confirmation referred to in Article 11 SPV, further measures are in any case required to verify beneficial ownership. These include obtaining or inspecting conclusive and up-to-date documents containing suitable information for verifying beneficial ownership, such as by-laws, other documents relating to the beneficiary rules, proof of income, tax returns, or gift agreements. Alternatively or in addition to this, own research to that effect in publicly available sources can also be carried out. The extent to which such research is useful and sufficient depends on the risk of the business relationship. It is crucial that the person subject to due diligence has no doubts as to the identity of the beneficial owners and their actual beneficial ownership and that the results of the own research are plausible. Any documents or research results that serve as plausibility checks must be included in the due diligence files. By way of exception, documents under company law may also be documented outside the due diligence files. In this context, please also note the provisions set out in point 5.3.3 of FMA Guideline 2013/1 on the risk-based approach under due diligence law, which may be applied *mutatis mutandis*.

With regard to the identification and verification of the identity of distribution recipients, please refer to the guidance in the Special Part on service providers for legal entities under point 4.2, which apply exclusively to that professional category under the conditions set out in Article 7a(2) and (4) SPG.

With regard to the completeness of the documentation in the due diligence files, the provisions on the identification and verification of the identity of the contracting party apply *mutatis mutandis*. Also in the case of the identification of the beneficial owner and distribution recipient, it must be possible for an external third party to identify which natural person has signed the documentation.

The identification and verification of the identity of the beneficial owner may also be accomplished through the measures set out in the instruction on safeguards pursuant to Article 14 SPV.

The forms in Annexes 1 and 2 of the SPV (Forms C, T, and D) shall be used to determine the beneficial owner and the recipient of a distribution. Please refer to FMA Communication 2015/7 with regard to the use of other forms (Forms V and Y).

5.4 Business profile (Article 8 SPG; Article 20 SPV)

The business profile is the basis for the ongoing monitoring of a business relationship and must therefore contain sufficient information to ensure adequate monitoring. The business profile must contain at least the information required under Article 20 SPV and must take into account the individual circumstances and risks of a business relationship.

The degree of detail depends on the individual risk classification of the business relationship. This means that the higher the risk of a business relationship, the more information must be available about the business relationship.

In any case – irrespective of the risk – the person subject to due diligence must, on the basis of the information provided, be able to identify any deviations or anomalies in relation to past experience with the customer and the customer's business relationship. In this context, the specific description of the economic background and the origin of the contributed assets plays a key role. Only a complete picture of the background of the business relationship enables the person subject to due diligence to identify connections with money laundering, predicate offences of money laundering, organised crime, or terrorist financing. In addition, the business profile must be sufficiently informative so that expert third parties – for example within the scope of a due diligence inspection – are also able to identify any anomalies in connection with executed transactions and so on after mere consultation of the business profile.

The business profile must enable the person subject to due diligence to identify deviations or anomalies in relation to past experience with the customer. For example, if it is possible to subsume every conceivable transaction under a business profile because the specifications in the profile are too generic, this is not sufficiently detailed (see FMA Complaints Commission resolution FMA-BK 2015/7, ON 16[1]). This is the case, for example, if an extremely indeterminate amount (e.g. CHF 50,000 to CHF 1 million) is stated with regard to the inflow/outflow of assets. As a general rule, it is certainly possible and useful to specify a certain bandwidth, provided that the profile is sufficiently informative in context. Accordingly, the bandwidth provided must also be sufficiently informative. In any case, it is crucial that the expected inflows and outflows are in line with the economic background of the contributor of the assets and with the information in the profile. Overly general information about the intended use without further specification (e.g. "expenses") is also considered too indeterminate.

Information about the origin of the assets that is not sufficiently informative is also considered to be inadequate. For example, it is not enough to simply state that the assets have been generated by "business activity" without providing further information on this activity. A mere statement that the customer is a "pensioner" without further information on the origin of the assets (e.g. due to long-standing business relationships established before retirement) is also considered to be insufficient. The scope of the available information is decisive in individual cases.

The profile should generally be more detailed with the increasing risk of the business relationship. Especially in cases of increased risk, it is necessary to further verify the plausibility of the customer's information in the business profile, for example by obtaining (third-party) supporting documents.

There are no specific formal requirements for the creation of the business profile. However, all relevant information must be collected and presented coherently in the due diligence documents. It is not enough if the relevant information can be found in various documents; instead, the business profile must be prepared in a way that is suitable for ongoing monitoring and comprehensible to third parties (see resolution FMA-BK 2014/2, ON 6). This principle also applies if the business profile is kept electronically. However, the necessary information may be compiled from other applications or databases in a central location. In addition, the business profile must be complete, dated, and signed, and the creator of the business profile must be identifiable to an external third party (see resolution FMA-BK 2015/7, ON 16). The provisions on signing the documentation when identifying the contracting party apply *mutatis mutandis*.

In the case of takeovers of mandates, but also mergers, acquisitions, or similar circumstances, in which business relationships are transferred to a new person subject to due diligence, it is permissible on an exceptional basis for the existing business profile to continue to be used if it complies with the provisions of due diligence law, is verified and (newly) dated and signed (see resolution FMA-BK 2015/1, ON 5).

[1] The cited decisions of the FMA Complaints Commission (FMA-BK) are in principle not published, but they may be requested from the FMA-BK in anonymised form.

The business profile must always be kept current and must be actively updated at regular intervals by the person subject to due diligence (e.g. by contacting the contracting party, obtaining relevant documents, own research, inclusion of new facts).

More detailed information on the specific requirements relating to the business profile as well as its updates and completeness can be found in FMA Guideline 2013/1 on the risk-based approach under due diligence law.

5.5 Risk-appropriate monitoring (Article 9 SPG; Article 22 SPV)

Pursuant to Article 9(1) SPG, the persons subject to due diligence must carry out timely and risk-appropriate monitoring of their business relationships, including transactions executed in the course of the business relationship, in order to ensure that these correspond to the business profile (Article 8 SPG).

The process for monitoring the business relationship must be regulated appropriately in the internal instructions or individual risk assessment under Article 9a SPG and brought to the attention of the employees concerned for daily use.

More detailed information on the specific requirements relating to risk-appropriate monitoring can be found in FMA Guideline 2013/1 on the risk-based approach under due diligence law.

5.5.1 Transaction monitoring

Under the legal requirements, transaction monitoring must be carried out in a timely manner, i.e. without delay after receipt of the transaction records or after knowledge of the transaction. After receipt of the transaction records (daily, monthly, or quarterly statements) or knowledge of the transaction, the transaction must be checked against the profile to determine conformity with the profile. In the case of business relations with increased or high risks, this check must be shown to take place within 14 days after receipt of the transaction records or after knowledge of the transaction [see Report and Motion (BuA) No. 159/2016, 67]. In other cases, i.e. for business relationships with a normal or minor risk, a period of 30 days for the check of a transaction against the profile is generally considered appropriate.
If the transaction does not correspond to the profile, a simple or, if necessary, a special investigation (Article 9 SPG; Article 22 SPV) must subsequently be commenced.

In addition, please note that cash transactions represent a higher risk from the point of view of combating money laundering than transactions by bank transfer. The risk of cash transactions must be taken into account by beginning the plausibility check at the time of their execution if they do not already correspond to the profile (e.g. payment of daily cash receipts from small and medium-sized enterprises). In general, downstream monitoring makes little sense and therefore does not meet the requirements of the SPG and the SPV in the case of cash transactions. This requirement is also justified by the fact that it is inherent to cash transactions that the customer is already present at the institution or service provider when such transactions are carried out.

5.5.2 Simple and special investigations (Article 9 SPG; Article 22 SPV)

As a consequence of risk-appropriate monitoring, the persons subject to due diligence are required under Article 9(3) SPG to carry out simple investigations with reasonable efforts when circumstances arise or transactions take place that deviate from the business profile. Pursuant to Article 22(1) SPV, the person subject to due diligence must obtain, evaluate and document the information that is appropriate to clarify and explain the background to such circumstances or transactions in this connection.

According to Article 9(4) SPG, special investigations must be carried out when circumstances arise or transactions take place giving rise to suspicion of money laundering, predicate offences of money laundering, organised crime, or terrorist financing. The indicators of money laundering, organised crime and financing of terrorism listed in Annex 3 of the SPV may also provide grounds for such investigations. The persons subject to due diligence may not discontinue the business relationship while these investigations are being carried out. In this context, the provisions of Article 18 SPG must be observed where applicable. According to Article 22(2) SPV, the person subject to due diligence must, in the context of special investigations, obtain, evaluate

and document the information that is appropriate to eliminate or corroborate any factors giving rise to suspicions as referred to in Article 17(1) SPG.

In order to rule out deviations from the business profile or suspicious facts, the person subject to due diligence must obtain appropriate information within the meaning of Article 22 SPV so that the fact patterns or transactions in question can be checked for plausibility. As a result, the person subject to due diligence must be able to rely on the fact that no unclarified fact patterns or suspicions (any longer) exist. It is important to note that suspicions of money laundering or predicate offences of money laundering do not arise only once the person subject to due diligence has knowledge of a concrete predicate offence or the actual perpetrator of the predicate offence. See the case law of the Constitutional Court in this context,[2] according to which it is not necessary for the realisation of the elements of the crime of money laundering that the predicate offence from which the incriminated assets originate is proven with respect to place, time, perpetrator, modality, etc., let alone that it is or was established in a guilty verdict.[3] This must be done all the more at the level of special investigations, which are already triggered by mere suspicious facts. See also the case law on the suspicion threshold triggering the reporting obligation under Article 17(1) SPG and on the timeliness of notification to the FIU.[4]

Statements of the client in the context of clarification of a specific transaction clarification must be checked for plausibility. It is important to note that not every statement by the client can be accepted as is and without verification. Accordingly, depending on the case in question, (third-party) documents must be obtained to check the plausibility of the statement. In this context, please also note the provisions set out in point 5.3.3 of FMA Guideline 2013/1 on the risk-based approach under due diligence law, which may be applied *mutatis mutandis*. The results of the investigations must be documented in the due diligence files in accordance with Article 9(5) SPG. The time period for the performance of a simple or special investigation is to be determined on the basis of the risk of the business relationship or the weight of the suspicion. A clear deadline can therefore not be specified, and a risk-based approach makes more sense. As a general rule, the more unusual and risky a transaction or fact pattern is considered to be, the more quickly the investigation should be carried out by the person subject to due diligence. According to case law,[5] special investigations under Article 9(4) SPG should not take months. If a constellation as described in the FIU guidance on the submission of reports of suspicion under Article 17 SPG (see more details under point 9 of this Instruction) arises, no further extensive investigations under Article 9(4) SPG are required, but rather a report of suspicion must be submitted under Article 17(1) SPG.

6. Check with regard to politically exposed persons (PEPs) (Article 11(4) SPG)

According to Article 2(1)(h) SPG, PEPs are natural persons who are, or were up to one year ago, entrusted with prominent political functions. Only persons who perform functions at the level of the state are considered PEPs. Members of regional or cantonal parliaments, mayors, honorary consuls, etc., are therefore not considered PEPs. Whether, in addition to actual PEPs within the meaning of Article 2 SPV, other persons in public offices or serving the public interest should be treated analogously (in particular former PEPs at the end of one year after they are no longer in office) and thus classified as business relationships with increased or high risk is left to the individual risk management of the person subject to due diligence under Article 11(1) SPG.

When establishing a business relationship or carrying out an occasional transaction, the person subject to due diligence must verify whether the contracting party or the beneficial owner is a PEP or not (PEP check). The person subject to due diligence must meet this obligation without delay, namely immediately upon establishing the business relationship or carrying out the occasional transaction (see resolution FMA-BK 2015/1, ON 5). Only in this way can the obligations under Article 11 SPG be met if it is determined whether a business relationship or an occasional transaction with a PEP exists in the first place.

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[2] See Constitutional Court judgment StGH 2014/152, § 8.4.

[3] See also Matthias Schmidle, Neues zur Geldwäscherei aus Wien und Strassburg, LJZ 2/2018, 78 et seq.

[4] See Court of Appeal judgment of 8. August 2018 in re 14 EU.2018.50, ON 35.

[5] See Court of Justice ruling of 3 December 2018 in re 13 EU.2018.142, ON 54.

In addition, the person subject to due diligence must ensure a regular PEP check of the entire client base in order to ensure the identification of PEPs within the framework of existing business relationships. This regular PEP check must be carried out at least once a year.

The PEP check also applies to recipients of a distribution as referred to in Article 2(1)(p) SPG. In principle, the PEP check must take place at the time of payout of the distribution. However, persons subject to due diligence who are informed about the identity of the recipient of the distribution by other persons subject to due diligence pursuant to Article 7a(3) SPG do not have to carry out a PEP check until they have been informed.

Both the PEP check (including negative results, subject to the exception in the next paragraph) and the consent of at least one member of the executive body to the establishment or continuation of business relations with PEPs must be documented in the due diligence file (see resolution FMA-BK 2015/1, ON 5).

In the case of persons subject to due diligence who use an automated, computerised system for identifying business relationships and transactions with PEPs (Article 21(1) SPV), the documentation of negative results of the PEP check may on an exceptional basis take place at a central location (physically or electronically). In such a case, the person subject to due diligence must ensure that the PEP check is assigned to the proper due diligence file. On request, proof that a PEP check has been carried out for certain persons must be provided without unnecessary delay, so that the negative result can be presented directly. Positive results must accordingly be documented in the due diligence file.

Effective 1 June 2018, persons subject to due diligence must use an automated, computerised system (e.g. World-Check, Factiva, Pythagoras) to identify business relationships and transactions with PEPs if they have in excess of 100 business relationships under their management (Article 21(1) SPV).

More detailed information on politically exposed persons can be found in FMA Guideline 2013/1 on the risk-based approach under due diligence law.

7. Timing of due diligence obligations

Due diligence obligations must be performed in the cases referred to in Article 5(2) SPG, including when establishing a business relationship. A business relationship is deemed to have been established if activities relevant to due diligence law are carried out, e.g. by establishing/forming a legal entity, signing a declaration of acceptance, constituting a body, opening a (bank) account, obtaining signatory powers on the (bank) account, but not merely by conducting preliminary talks or issuing a formation order prior to acceptance by the person subject to due diligence.

If the due diligence obligations cannot be met, the person subject to due diligence may not establish the business relationship or carry out the desired transaction and must verify whether a report under Article 17 SPG is necessary. Likewise, an existing business relationship must be discontinued if the due diligence obligations cannot be performed. In such cases, the discontinuation must be accompanied by sufficient documentation of the outflow of assets. This does not affect any reporting obligations under Articles 17 to 19 SPG.

The discontinuation of an existing business relationship takes precedence over other statutory or contractual provisions (Article 5(3)(b) SPG).

If the person subject to due diligence has doubts concerning the identity of the contracting party or the beneficial owner, the person subject to due diligence must repeat the identification. If doubts persist, but no suspicion arises within the meaning of Article 17 SPG (otherwise see procedure set out in Article 15(2) SPV), and the person subject to due diligence therefore terminates the business relationship, outward movements of assets shall be permitted only if proper records are kept. This allows the competent authorities to trace the assets further if necessary. In such a case, the person subject to due diligence may not disburse money in cash or physically surrender securities and precious metals, unless the contracting party has fully met the obligations and the documentation is complete.

Article 18(2) SPV sets out that in cases where this is necessary to maintain the normal conduct of business and there is a low risk of money laundering and terrorist financing as referred to in Article 10 SPG, the person subject to due diligence shall carry out the verification of the identity of the contracting party or beneficial owner as soon as possible after the first contact and ensure that no outward movement of assets takes place in the meantime.

Each case must be assessed individually. In no case may an outward movement of assets occur without the necessary documentation.

What should be considered "normal conduct of business" as referred to in Article 18(2) SPV depends on the individual case. Cases are conceivable, for instance, in which the travel document has already expired when the business relationship is established and no longer entitles the holder to enter the Principality of Liechtenstein. "Normal conduct of business" does not exist, for example, if there are doubts about the contracting party's information concerning the beneficial owner or the business profile.

8. Delegation and outsourcing of due diligence obligations

8.1 Delegation (Article 14 SPG, Article 24 SPV)

In principle, a person subject to due diligence may delegate due diligence obligations referred to in Article 5(1)(a) to (c) SPG to:

- another (domestic) person subject to due diligence; or
- a natural or legal person domiciled in another EEA Member State or third country:
    - whose due diligence and recordkeeping requirements meet the requirements set out in the EU Anti-Money Laundering Directive;
    - whose compliance with these requirements is supervised in a way that is consistent with Chapter VI Section 2 of the EU Anti-Money Laundering Directive; and
    - who is not domiciled in a state with strategic deficiencies as referred to in Article 2(1)(u) SPG.

The "other person subject to due diligence" is a (domestic) person subject to due diligence in accordance with Article 3(1) and (2) SPG. If due diligence obligations are to be delegated to an "other person subject to due diligence", the person subject to due diligence must check, for the purpose of the duty of due diligence of the (intended) delegate, whether the category of institution or profession of the latter is mentioned in the catalogue set out in Article 3(1) and (2) and whether any required licence is available (e.g. by inspecting the FMA register of licence holders). If the performance of certain activities is a prerequisite for due diligence (e.g. in the case of professional trustees, members of tax consultancy professions, and external bookkeepers and other persons subject to due diligence referred to in Article 3(3) SPG), a confirmation from the FMA on the duty of due diligence of the (intended) delegate must be obtained.

The EEA Member States are *de jure* obliged to implement the due diligence and recordkeeping requirements laid down in the EU Anti-Money Laundering Directive and the supervisory requirements laid down in Chapter VI Section 2 of the EU Anti-Money Laundering Directive. It can therefore be assumed that the systems for combating money laundering and terrorist financing in the EEA Member States meet the requirements of Article 14(1)(b)(1) and (2) SPG (equivalence of due diligence and recordkeeping requirements and supervision). To that extent, it is not necessary to verify the equivalence of the due diligence, recordkeeping, and supervision obligations applicable in another EEA Member State. When assessing equivalence, the current version of the list of countries in Section IV Annex 1 of this Instruction applies.

In all cases, however, the persons subject to due diligence must check themselves whether the (intended) delegate domiciled in an EEA Member State or a third country is actually subject to the due diligence and recordkeeping obligations and supervision of the competent authority of the country in question (e.g. by obtaining confirmation from the local supervisory authority or by inspecting public registers, where they exist). In the case of auditors, external bookkeepers, tax consultants, real estate agents, notaries, and other self-

employed members of the legal consultancy professions, supervision by a self-regulatory body is also sufficient (see Article 48(9) of the EU Anti-Money Laundering Directive).

It must also be borne in mind that the delegate may not be domiciled in a state with strategic deficiencies as defined in Article 2(1)(u) SPG, even where that state meets the requirements under Article 14(1)(b)(1) and (2) SPG. In this context, please refer to the states with strategic deficiencies enumerated in Annex 4 SPV.

Persons subject to due diligence who avail themselves of third parties in this sense must ensure, in accordance with Article 24(1) SPV, that the data and documents collected by the third party under the SPG and SPV are transmitted to them immediately, and that the delegate confirms by signature that the copies produced conform to the originals or authenticated copies.

Even in the case of delegation, the responsibility for proper compliance with due diligence obligations always remains with the person subject to due diligence. There is no possibility of reducing the culpability of the person subject to due diligence.

The delegation is characterised by the fact that the due diligence obligations under Article 5(1)(a) to (c) SPG are exercised by a third party (see Articles 25 et seq. of the EU Anti-Money Laundering Directive). It should be noted in this regard that the third party may not act as a contracting party in the business relationship, otherwise inadmissible self-identification would occur.

The delegation must be documented, for example by a written delegation agreement. Further delegation (sub-delegation) by the delegate is not permitted.

In this context, it should be recalled that the provisions concerning delegation do not apply where persons subject to due diligence themselves obtain all documents and information required under the SPG and SPV (with or without personal contact).

Risk-appropriate monitoring of the business relationship as referred to in Article 5(1)(d) SPG is excluded from delegation.

8.2 Outsourcing (Article 14(4) SPG, Article 24a SPV)

Under certain conditions, both risk-appropriate monitoring as well as the identification and verification of the identity of the contracting party and the beneficial owner and the drawing up of the business profile may be contractually transferred to an outsourcing service provider. Article 24a SPV sets out the minimum requirements for effective outsourcing.

In this context, outsourcing of risk-appropriate monitoring analogous to delegation may be considered only if the outsourcing service provider is another person subject to due diligence under the SPG or a natural or legal person domiciled in another EEA Member State or third country under Article 14(1)(b) SPG. When verifying these conditions, the guidance under point 8.1 on delegation applies *mutatis mutandis*.

Outsourcing may occur under certain circumstances within a corporate group, but the arrangements in the individual case are always decisive.

The basis for outsourcing is a contractual agreement according to which the outsourcing service provider is to be regarded as part of the person subject to due diligence.

Finally, a clear distinction must be made between an outsourcing relationship and a delegation relationship.

9. Obligation to report to the FIU

Where suspicion of money laundering, a predicate offence to money laundering, organised crime, or terrorist financing exists, the persons subject to due diligence must immediately report to the Financial Intelligence Unit (FIU) in writing in accordance with Article 17(1) SPG.

In this connection, responsibility for submitting reports lies with the (responsible) member of the executive body appointed to ensure compliance with the SPG.

In this regard, see also the provisions set out in the guidance on the submission of suspicious activity reports to the FIU pursuant to Article 17 SPG: https://www.llv.li/files/sfiu/20170925-fiu-wegleitung-konsolidiert.pdf.

10. Reporting of unlawful acts

Under Article 28a(3) SPG, persons subject to due diligence having 100 employees or more who are involved with business relationships must create an internal whistleblower system through which employees can report violations of due diligence law via a special, independent, and anonymous channel.

Persons subject to due diligence which already have such an internal reporting system under the provisions of special legislation may use it for the purposes of the SPG.

In addition, the FMA has established a central reporting system under Article 28a(1) SPG by means of which potential or actual violations of due diligence law can be reported. Further information can be found on the FMA's website: https://www.fma-li.li/en/client-protection/whistleblowing.html

11. Documentation and internal organisation

11.1 Documentation (Article 20 SPG; Articles 27 to 29 SPV)

Under Article 20(1) SPG, the persons subject to due diligence must keep a record of compliance with the due diligence obligations set out in Articles 5 to 16 SPG and the reporting obligation set out in Article 17 SPG as provided in the SPG. They shall establish and maintain due diligence files for this purpose.

Under Article 27(1) SPV, the due diligence files must contain, in particular, the records and vouchers issued and consulted in order to comply with the provisions of the SPG and the SPV. In addition to the documents and records that have been used to identify and verify the identity of the contracting party and the beneficial owner, the business profile, and the transaction records, the due diligence files must also contain documentation concerning any investigations conducted in accordance with Article 9 SPG and all documents, records and vouchers consulted in this connection. The reasons for any application of simplified or enhanced due diligence pursuant to Articles 10 and 11 SPG must also be documented in the due diligence files. As an alternative, these reasons may also be documented in other suitable internal documents, such as the list of mandates or a risk matrix.

According to Article 28(1) SPV, the due diligence files must be kept in such a way that they enable third parties with specialist qualifications to make a reliable judgement concerning compliance with the provisions of the SPG and SPV. Under paragraph 2 of the same article, they may under certain conditions be stored in writing, electronically or in another similar format.

With reference to the requirements for electronic storage set out in Article 28(2) SPV, it is possible for due diligence files to be kept entirely in electronic form without the originals of certain documents such as, for example, identification documents having to be physically stored at the same time. These documents can be destroyed once they have been digitised. On a supplementary basis, see also Article 28(3) SPV, according to which the integrity and legibility of the image and data storage media must be subject to regular checks. Ideally, a backup copy of the electronic data storage media is made in order to ensure access at all times. Furthermore, in the case of electronic storage, the examination of the records may not be more onerous or take up more time than the examination of the underlying documents.

The relevant information must be collected, prepared, and documented in the due diligence files. If a third party with specialist qualifications has to piece the information together first, this does not permit a reliable judgement to be made concerning compliance with the provisions of the SPG and the SPV (see resolution FMA-BK 2014/2, ON 6).

In summary, the due diligence files must be kept in such a way that a third party who is familiar with the provisions of the SPG and the SPV can without difficulties obtain an overview of the business relationship and its risks. In particular, this means that information with which the employees of the person subject to due diligence are familiar due to their personal background must both be included in the due diligence file and

prepared in such a way that it is legible and comprehensible for an external third party. This also means in particular that the due diligence files must in principle be kept in German. Basic documents (e.g. application to open an account, forms for identifying the contracting party and beneficial owner) may be included in foreign languages. However, the relevant passages of documents which serve to check the plausibility of information and transactions and which were submitted by the customer in a foreign language other than English must be translated into German or English so that the statements made therein can be checked by a third party. As needed, the FMA may also order the translation of English documents into German.

The due diligence files must be held at a storage site in Liechtenstein that is accessible at all times (Article 28(5) SPV). The reason for this is that the competent domestic supervisory authorities must be guaranteed access at all times. In the case of electronic storage of due diligence files, it is permissible for the storage system ("server") to be located abroad, but it must be ensured that the data of the due diligence files are always available in up-to-date form in Liechtenstein. This can be done, for example, through regular synchronisation and storage of the data in Liechtenstein.

11.2 Internal organisation (Article 21 SPG; Articles 31 et seq. SPV)

The persons subject to due diligence shall take the necessary organisational measures and provide appropriate internal instruments of control and monitoring. They shall in particular issue internal instructions, arrange secure storage of the due diligence files, and arrange for training and development of their staff.

As appropriate to the circumstances and the individual risks, the internal organisation shall be structured according to the type and size of the enterprise as well as according to the number, type, and complexity of the business relationships. The effective fulfilment of the internal functions and due diligence requirements must be guaranteed at all times.

11.2.1 Internal instructions (Article 21(1) SPG; Article 31 SPV)

The persons subject to due diligence must issue internal instructions containing at least the information set out in Article 31 SPV. They must take into account the nature and complexity of the business activities of the person subject to due diligence. The internal instructions must be brought to the attention of all employees involved in business relationships and shall be issued by the executive body.

The instructions must be designed in such a way that they can serve as guidance for employees when exercising due diligence. As a rule, it is therefore not sufficient for the instructions to merely reflect the text of the SPG or SPV. Rather, the persons subject to due diligence must formulate the internal instructions specifically for their business activities.

11.2.2 Training and development (Article 21(1) SPG; Article 32 SPV)

The persons subject to due diligence must make provision for ongoing, comprehensive training and development of their employees involved in the business relationships. This shall include instruction on the regulations for the prevention and combating of money laundering, predicate offences to money laundering, organised crime and the financing of terrorism as well as data protection law. At least the following topics must be covered:

- the obligations arising from the SPG and the SPV;
- the relevant provisions of the Criminal Code;
- the internal instructions;
- the conveyance of knowledge that will enable the employees to recognise transactions that are possibly connected with money laundering, organised crime or terrorist financing and to act correctly in such cases;
- the relevant provisions of data protection legislation.

Ideally, persons subject to due diligence and their employees attend external training and development events. It is of course permissible for the contents of external events to be passed on subsequently as part of internal training.

11.2.3 Internal functions (Article 22 SPG; Articles 33 et seq. SPV)

The persons subject to due diligence shall appoint a contact person for the competent supervisory authority as well as persons or specialist units for the internal functions of compliance officers and investigating officers.

In addition, a member of the executive body must be appointed who is responsible for ensuring compliance with due diligence law. The objective of this rule is to generate the strongest possible commitment to combating money laundering in the highest bodies of a legal entity. Accordingly, the FMA understands the term "persons in a comparable function" as referred to in Article 2(1)(r) SPG to mean only those persons who have the same hierarchical status as the members of the management, the board of directors, etc., and have powers comparable to those of the members of the management, the board of directors, etc. For example, a head of compliance who heads the compliance department and has the necessary and sufficient powers, but is not also a member of the general management, does not meet the qualification of the responsible member of the executive body. If no general management exists, at least the same hierarchical status as the board of directors or other equivalent body is required.

The responsible member of the executive body must have an in-depth knowledge in matters of the prevention and combating of money laundering, predicate offences of money laundering, organised crime and terrorist financing as well as data protection law, and be familiar with the current developments in those fields. This person must also be provided with sufficient powers to ensure compliance with due diligence law by the person subject to due diligence (Article 36(1) and (2) SPV). If the person subject to due diligence can be accused of a monitoring failure or deficient organisation, the competent member of the executive body can be held criminally responsible (Article 33(1) SPG). In particular, it must be ensured that this person has free access to all information, data, records and systems which the person needs to perform his or her duties. The person must be able to stop transactions, block accounts, and order other such measures. The person must also have the right to veto the establishment of a business relationship or be able to enforce the discontinuation of such a relationship. This person is furthermore responsible for submitting suspicious activity reports to the FIU within the meaning of Article 17(1) SPG.

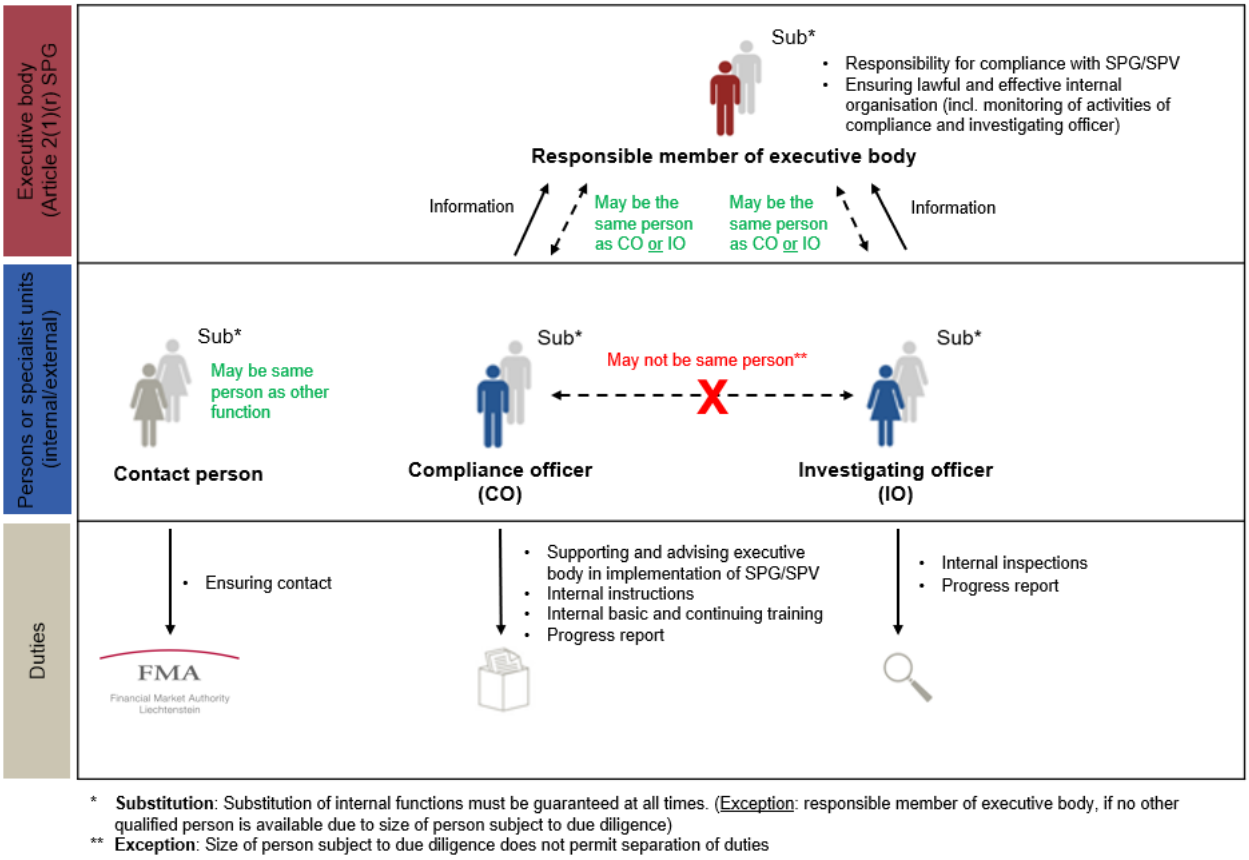
The compliance officer and the investigating officer must also be given access to the due diligence files at any time to enable them to perform their duties. In addition, these function holders must have an in-depth knowledge in matters of the prevention and combating of money laundering, predicate offences of money laundering, organised crime and terrorist financing as well as data protection law, and be familiar with the current developments in those fields. If a specialist unit is appointed for the functions of the compliance officer or investigating officer, the persons carrying out the work must likewise fulfil the described qualifications under due diligence law. In addition, a third party with specialist qualifications within the meaning of Article 28(1)(b) SPV must at all times be able to identify the persons by whom the tasks have been performed, for example by means of recognisable signature of the underlying documentation.

One person or a specialist unit, if applicable, may perform several functions, provided that implementation of the SPG is ensured. The functions of the compliance officer and the investigating officer should in principle be assigned to different persons in order to ensure a separation of duties. One of these two functions can also be performed by the responsible member of the executive body, provided that implementation of the SPG is ensured. This requires *inter alia* that the member of the executive body has sufficient resources to perform another function. Any exercise of several functions going beyond this (subject to that of the contact person) by one person must be limited to those cases in which the size of the person subject to due diligence does not permit the separation of duties (e.g. sole proprietorships).

If the duties of the compliance officer or investigating officer are delegated to appropriately qualified internal or external individuals or specialist units (delegation), the function holders remain responsible for the proper performance of their functions. The situation is only different if not only the duties, but also the function as such is transferred to a person or specialist unit. Substitution of internal functions must be guaranteed at all times. This means that for all the functions (contact person, compliance officer, investigating officer,

responsible member of the executive body), a deputy must be appointed with the same required professional and hierarchical qualifications. With regard to the responsible member of the executive body, the appointment of a deputy may be waived in exceptional cases if, due to the size of the person subject to due diligence, no other qualified person is available (e.g. sole proprietorship). However, if the size of the person subject to due diligence permits, the person subject to due diligence must ensure that the required qualifications are fulfilled by an existing member of the executive body as deputy (e.g. through appropriate training). Notwithstanding this exception, however, in the event of a foreseeable extended period of absence (e.g. medical treatment, special leave), a new responsible member of the executive body within the meaning of due diligence law must be appointed for the duration of the absence. In such a case, it is sufficient for this person to have sufficient powers within the meaning of Article 36(2) SPV, but the appointment as a governing body of the legal entity is not mandatory.

To illustrate the above, please refer to the following illustration of internal functions:



* **Substitution**: Substitution of internal functions must be guaranteed at all times. (Exception: responsible member of executive body, if no other qualified person is available due to size of person subject to due diligence)
** **Exception**: Size of person subject to due diligence does not permit separation of duties

The FMA must be notified of the appointment and any change of function holders within five working days at the latest after the function has been taken up. The obligation to appoint and notify the internal function holders and their deputies applies to all persons subject to due diligence as referred to in Article 3(1) SPG. Consequently, natural persons who perform activities subject to due diligence as referred to in Article 3(1) SPG must also appoint internal function holders and their deputies and notify the FMA of their appointment or change. This applies in principle regardless of whether these natural persons are employed or self-employed. In exceptional cases, however, in the case of employed persons, it is considered sufficient if the (initial) notification of the appointment of the internal functions is made in consolidated form by the employer. All persons subject to due diligence to be attributed to the employer must be listed in the comments on the form provided for this purpose. If there is a subsequent change of employer in the case of employed persons,

this does not trigger any obligation to notify. In that case, the FMA assumes that the internal function holders notified for the new employer also apply to the new employee, unless the FMA is actively notified otherwise.

The following form must be used for this notification: Form for the notification of the contact person, the compliance officer, the investigating officer, and/or the responsible member of the executive body.

12. Transitional provisions in the SPG/SPV

With respect to the SPG and SPV amendments effective 1 September 2017, there are extensive transitional provisions to give the persons subject to due diligence sufficient time to implement the new obligations.

In general, the new law applies to business relationships existing at the time the SPG entered into force (1 September 2017) only as of 1 June 2018. This general rule is subject to the rules contained in paragraphs 7 and 8 of the transitional provisions on determining the beneficial owners of existing business relationships in accordance with the new definition of beneficial ownership. For existing business relationships to which simplified due diligence could be applied in the past, the new due diligence obligations must be met by 31 December 2018 at the latest.

With regard to the other transitional provisions and the provisions on entry into force, see the Law amending the Due Diligence Act, LGBl. 2017 No. 161, and the Ordinance amending the Due Diligence Ordinance, LGBl. 2017 No. 215.

13. Due diligence inspections

Auditors and audit firms mandated by the FMA regularly audit the persons subject to due diligence for compliance with the SPG and the SPV as well as the guidelines, communications, and instructions issued by the FMA (regular due diligence inspections). The audit frequency set out in Article 37a(1) SPV is applied in principle. In exceptional cases, the FMA may deviate from this specified audit frequency.

In cases of doubt that the due diligence requirements are being met or if circumstances exist that appear to endanger the reputation of the financial centre, the FMA may also conduct extraordinary inspections or order them to be conducted.

Further details on the content of due diligence inspections can be found in FMA Guideline 2013/2 on due diligence inspections by mandated due diligence auditors.

14. Annual electronic reporting under the SPG (Article 37b(1)(a) SPV)

The revised Due Diligence Act, which entered into force on 1 September 2017, created comprehensive, risk-based due diligence supervision. For this purpose, different factors must be reported annually to the FMA by all persons subject to due diligence. The report to the FMA must be made by the persons subject to due diligence through an electronic reporting system.

For more detailed information, please refer to FMA Communication 2017/3 on electronic reporting in accordance with due diligence law.

15. Final provisions and transitional periods

The entire instruction, including the General and Special Part, applies effective 24 April 2018 and replaces all previous sector-specific instructions.

The amendments of 7 May 2019 entered into force on that day. For business relationships existing at the time of the entry into force of those amendments, the amendments in the **General Part, point 5.3**, which concern

- verification of the identity of the beneficial owner by means of risk-based and adequate measures (obtaining documents with probative value for the purpose of Article 7 SPV with the exception of cases of low risk), and

- verification of beneficial ownership in cases of normal risk by means of further measures such as obtaining or inspective appropriate documents

as well as the amendments in the **Special Part on service providers for legal entities, point 4.2**, which concern

- verification of the identity of the distribution recipient by appropriate measures (obtaining documents with probative value for the purpose of Article 7 SPV)

enter into effect on **7 May 2020**.

The amendments of 27 December 2019 concerning TT service providers subject to due diligence and other persons subject to due diligence with a nexus to TT services and virtual currencies and tokens enter into force on **1 January 2020**.

The amendments of 11 March 2020 enter into force on **15 April 2020**.

Updated: 11 March 2020

II. Special Part

Undertakings for collective investment (Article 3(1)(c) SPG)

1. Scope and application of due diligence

1.1 General remarks

Following the adoption of the EU Anti-Money Laundering Directive, due diligence obligations were attached to undertakings for collective investment.[6] All the following statements also apply to the acting intermediary as the representative of the fund.[7] Self-managed investment companies act for themselves.

1.2 Simplified application of due diligence

In the case of undertakings for collective investment which meet the requirements of Directive 2009/65/EC[8] or Directive 2011/61/EC,[9] simplified due diligence may be applied if the subscribing institution is established in an EEA Member State or equivalent country as defined in Section IV Annex 1 of this Instruction and no aspects are apparent which would lead to application of enhanced due diligence.

Undertakings for collective investment which meet the requirements of Directive 2009/65/EC or Directive 2011/61/EU are Liechtenstein funds under the UCITS Act (UCITSG) and the AIFM Act (AIFMG), given that these are typically subscribed to by a large number of end customers and are therefore not comparable to "legal entities that are personal asset-holding vehicles" (see Annex 2 Section A(a)(3) SPG).

A minimum level of monitoring of the business relationship must always be maintained in order to ensure that the reporting obligation to the FIU pursuant to Article 17 SPG is met. A minimum of monitoring means that despite the application of simplified due diligence, the business relationship must be subject to due diligence in the normal course of business. In other words, the exercise of normal business activities constitutes the basis for the possible submission of a suspicious activity report. No further activity beyond normal business activities is required. On the basis of that normal business activity, the person subject to due diligence knows the subscriber or the subscribing institution and is therefore in principle in a position to recognise and report any anomalies and deviations from normal business conduct.

1.3 Enhanced due diligence (Article 11 SPG)

In the case of undertakings for collective investment which do not meet the requirements of Directive 2009/65/EC or Directive 2011/61/EU or, e.g., have beneficial owners resident in countries with an increased geographical risk, it can be assumed that enhanced due diligence must be applied.

The classification of business relationships according to a risk-based approach must in principle always be carried out individually by the persons subject to due diligence. Criteria that may be considered for business relationships and transactions with increased risks are listed in Article 11 SPG and in Annex II to the SPG. However, these are not exhaustive. This means that the person subject to due diligence may, in accordance with Article 9a SPG, define criteria in addition to the legally prescribed cases. The applicability of enhanced due diligence can thus result both from the legal factors (see Article 11(3) to (6) SPG) and from the risk classification according to Article 9a SPG:

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[6] Undertakings for collective investment have been subject to due diligence since 1 September 2017. A transitional provision stipulates that the new law will apply from 1 April 2018 to the persons subject to due diligence under Article 3(1)(c) SPG who were excluded from the scope of the Due Diligence Act under the previous law (i.e. keeping the register of units not by the management company/AIFM but by the depositaries).

[7] Fund means any sub-fund of an umbrella fund or a single fund.

[8] Directive 2009/65/EG of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

[9] Directive of 8 June 2011 on Alternative Investment Fund Managers (AIFM Directive)

If regular or enhanced due diligence is called for, the simplifications under Article 22b(3) SPV cannot be applied.

1.4 Simplifications with regard to identification of the contracting party and beneficial owner

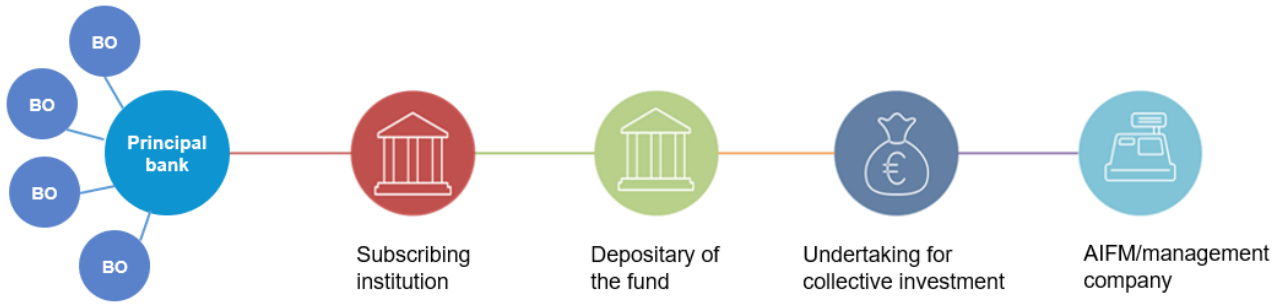
1.4.1 Where Article 22b(3) SPV applies

Under Article 22b(3) SPV, in the case of undertakings for collective investment (UCITS/AIF) which:

- meet the requirements of Directive 2009/65/EC[10] or Directive 2011/61/EU[11] and which
- have been subscribed or are held by legal entities as defined in Article 3(1)(f)[12] or g[13] SPV, which are or were acting as a direct contracting party in their own name, but for the account of third parties,

the obligation referred to in Article 6(1) SPG[14] and Article 7(1) and (2) SPG[15] shall have been met if the person subject to due diligence:

a) verifies the identity of the subscribing institution from a unit register or a subscription certificate;
b) by adopting a risk-based approach, takes measures to make certain that on the basis of the customer, product and country risk assessment, the risk with reference to money-laundering, organised crime and terrorist financing is minor;[16] and
c) examines the internal control and supervisory measures of the subscribing institution, in order to make certain that the subscribing institution performs appropriate due diligence measures, adopting a risk-based approach, in respect of its own customers as set out in Article 5(1) SPG.[17]



This means that if the conditions set out in Article 22b(3) SPV are met:

- the undertaking for collective investment does not have to formally identify the contracting party within the meaning of Article 6(1) SPG, but only identifies the subscribing institution; and
- with regard to the identification and verification of the beneficial owner (Article 7(1) and (2) SPG), it is sufficient if the fund in question covers the corresponding subscribing institution. It is not necessary to document for which third-party account (or for which end customer) the subscribing institution is acting.

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[10] Directive 2009/65/EG of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

[11] Directive of 8 June 2011 on Alternative Investment Fund Managers (AIFM Directive)

[12] These are banks, investment firms, fund trading platforms, central securities depositories, and insurance undertakings licensed in Liechtenstein

[13] These are banks, investment firms, fund trading platforms, central securities depositories, and insurance undertakings in equivalent jurisdictions as defined in Section IV Annex 1 of this Instruction

[14] Identification and verification of the identity of the contracting party

[15] Identification and verification of the identity of the beneficial owner

[16] This includes in particular the following measures: review of the sanctions lists on sanctioned entities

[17] This includes in particular the following measures: review of the sanctions lists on sanctioned entities

In practice, the depositary in any event usually keeps the unit register (on behalf of the management company/AIFM) so that the depositary has current information on new subscriptions and redemptions. The fund (i.e. the management company/AIFM) must ensure that this information is accessible.

The term "undertakings for collective investment which meet the requirements of Directive 2009/65/EC or Directive 2011/61/EU" means, in addition to UCITS and AIFs in conformity with the directives, also funds from third countries within the meaning of Section IV Annex 1 of this Instruction which meet the standards of the aforementioned directives. The verification of compliance with the requirements is the responsibility of the party applying Article 22b(3) SPV and must be demonstrated to the FMA on request.

1.4.2 Where Article 22b(3) SPV does not apply

Where the simplifications in the identification of the contracting party and the beneficial owner pursuant to Article 22b(3) SPV do not apply:[18]

- the contracting party must be identified in the usual manner in accordance with Article 6(1) SPG;
- when identifying and verifying the identity of the beneficial owner, it must be determined for which third-party account (or for which end customer) the subscribing institution is acting. This person or these persons are then considered to be the beneficial owners of the business relationship. If the subscribing institution acts on behalf of one or more natural persons, a written declaration must be issued for natural persons (there is no standard form for this purpose). Where the subscribing institution is acting on behalf of a legal entity under Article 3(1)(a) SPV (corporate or quasi-corporate), Form C may be used, but it must be made clear that it does not reflect the circumstances of the subscribing institution but rather of the legal entity for which the subscribing institution acquired the fund units. Where the subscribing institution is acting on behalf of a legal entity referred to in Article 3(1)(b) (foundation, trust, or similar legal entity), Form T may be used. Here again, it must be made clear that the circumstances of the legal entity for which the subscribing institution has acquired the fund units are being reflected, not those of the subscribing institution; and
- any change to the beneficial ownership of the fund must be documented immediately and the relevant forms must be adjusted.

The simplifications under Article 22b(3) SPV are in particular not applicable to investment undertakings under the Investment Undertakings Act (IUG), non-equivalent third country funds, or subscriptions by institutions from a non-equivalent third country or high-risk country (see Annex 4 SPV).

2. Duty to update business profile

With regard to the frequency of the obligation to update the business profile, please refer to FMA Guideline 2013/1.

Where Article 22b(3) SPV applies, the business profile must be updated monthly in any event when a new subscriber is entered in the unit register, bearing in mind that every business relationship must be recorded.

3. Due diligence inspections

The regular due diligence inspection of undertakings for collective investment is carried out every four years (see Article 37a(1)(c) SPV). Extraordinary inspections are possible at any time.

[18] This also applies if a third country previously listed in Annex 1 no longer meets the equivalence criteria and is therefore no longer listed in Annex 1 (e.g. due to a reassessment by the FATF). Article 22b(3) SPV may subsequently no longer be applied in the case of new business relationships or new fund subscriptions. However, this change does not mean that past fund subscriptions by institutions from the third country in question must be reassessed.

Management companies with individual portfolio management (as additional service)

The Special Part contains guidance supplementary to the General Part for each sector. Both parts form an integral document and must therefore be read together.

Specific questions of interpretation can be discussed with the FMA.

The EU Anti-Money Laundering Directive applies to natural or legal persons acting in the exercise of their professional activities relating to the management of client money, securities or other assets (see Article 2(1)(3)(b)(ii) of Directive EU 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing). These rules have been implemented in Article 3(1)(i) SPG. Management companies for funds (UCITS and/or AIFs) with the additional licence for individual portfolio management are comparable to asset management companies with regard to this activity, so that the same due diligence obligations apply as for an asset management company as referred to in Article 3(1)(i) SPG.

Accordingly, all guidance applicable to asset managers also applies *mutatis mutandis* to management companies with individual portfolio management as an additional service in regard to their individual portfolio management.

Insurance undertakings (Article 3(1)(d) SPG)

1. Addressees/scope

Article 3(1)(d) SPG places insurance undertakings with a licence under the Insurance Supervision Act, insofar as they offer direct life insurance, under the SPG. Pursuant to Article 3(2) in conjunction with Article 3(1)(d) SPG, Liechtenstein branches of foreign insurance undertakings are also subject to the SPG insofar as they offer direct life insurance.

Due to their low risk of being abused for activities in connection with money laundering, organised crime, or terrorist financing, Article 4(a) SPG excludes institutions exclusively operating in the field of occupational old age, disability, and survivors' provision. These primarily include pension schemes under the Occupational Pensions Act (BPVG) and pension funds under the Pension Funds Act (PFG).

An analogous application of Article 4(a) SPG is appropriate for insurance products where benefits are provided exclusively for institutions for occupational provision under the BPVG and PFG that wish to cover their risks externally (reinsurance of death and disability risks of pension schemes). In this case, the death and disability risks for pension schemes and pension funds are insured in order to balance the risks that cannot be assumed by individual pension schemes and pension funds, in particular the insurance of increased individual risks and the reinsurance of extraordinary overall losses.

The same also applies if risk coverage is offered for pension schemes outside tax-privileged occupational pension provision. The precondition is that the contracting parties in these cases are also only pension schemes within the meaning of the BPVG. Contracts that are concluded not with pension schemes but with professional associations or other collectives that are not considered to be institutions for occupational provision within the meaning of Article 4(a) SPG accordingly fall within the scope of the SPG.

2. Due diligence obligations

All due diligence obligations under Article 5(1) SPG must in principle be performed by the insurance undertakings when the business relationship is established, i.e. when the application for the policy is submitted, but at the latest before the life insurance contract is definitively concluded.

Only in cases where this is necessary to maintain normal conduct of business and a low risk of money laundering and terrorist financing has been established under Article 10 SPG, the verification of the identity of the contracting party or the beneficial owner can be completed after the business relationship has been established. The verification must be carried out as soon as possible after the first contact and it must be ensured that no outflow of assets takes place in the meantime (Article 18(2) SPV).

The insurance undertakings must as a rule identify and verify the policyholder of a life insurance contract as the contracting party for the purpose of Article 6 SPG. If doubts arise about the identity of the contracting party in the course of the business relationship, the identification and verification of the identity of the contracting party must be repeated.

If the policyholder of an existing insurance contract is replaced by a different policyholder – especially as a consequence of assignment – the contracting party and the beneficial owner must be identified and verified again. (Article 15(3) SPV)

In the case of insurance contracts, the natural persons who ultimately pay the insurance premiums are deemed the beneficial owners. They must be identified and verified in accordance with the principle set out in Article 7 SPG.

Pursuant to Article 7b SPG, in the case of life insurance policies and other insurances taken out with an investment purpose, the insurance undertakings must establish the identity of the beneficiary at the time of paying out and take appropriate steps to verify that identity. If the beneficiary is a legal entity, the identity of its beneficial owners must be established and verified.

Already at the time when the contract is concluded, insurance undertakings must record the name of the beneficiaries identified as a natural person specified by a name or as a legal entity. For beneficiaries whose identity is established from characteristics or by category or in another way, they must obtain sufficient information in respect of these beneficiaries in order to ensure that they are able to establish their identity at the time of paying out.

3. Delegation

In principle, insurance undertakings may delegate the performance of due diligence obligations under Article 5(1)(a) to (c) SPG to certain third parties under the conditions of Article 14 SPG. In this context, they must ensure that the data and documents gathered by the third party under the SPG are immediately transmitted to them and that the delegate confirms by signature the conformity of the copies produced with the originals or authenticated copies. Even in the case of delegation, the responsibility for proper compliance with the due diligence obligations always remains with the delegating insurance undertaking.

This means due diligence obligations may be delegated to registered master intermediaries (master pools or intermediary pools). Sub-delegation by the master intermediary, however, is excluded under Article 24(3) SPV. If recourse is had to the insurance intermediaries affiliated with the master intermediary, the due diligence obligations must be delegated to them directly by the insurance undertaking, taking into account Article 14(1) SPG.

4. Due diligence inspections

In the case of insurance undertakings, the regular due diligence inspection of compliance with the provisions of the SPG and the associated SPV is carried out by the audit office subject to special legislation. Under Article 37(1)(a) SPV, this audit takes place annually in principle.

In addition to the inspections carried out by the audit firms, the FMA audits compliance with the SPG and the SPV and with the guidelines, communications, and instructions issued by the FMA as part of its own on-site inspections. Under Article 37a(3) SPV, the frequency of these inspections is governed by the risk presented by the person subject to due diligence.

Insurance intermediaries (Article 3(1)(g) SPG)

1. Addressees/scope

Article 3(1)(g) SPG subordinates insurance brokers licensed under the Insurance Distribution Act to the SPG, insofar as they broker life insurance contracts and other investment-related services.

In principle, all activities relating to the distribution of life insurance policies are covered by the SPG, i.e. advising, proposing, or carrying out other preparatory work for their conclusion and assisting in the management or performance of contracts (portfolio management). The SPG also covers the provision of information on life insurance contracts based on criteria chosen by a client via a website or other media, and the establishment of a ranking of life insurance products, including a price and product comparison or a price discount if the client can conclude the life insurance contract directly or indirectly via the website or other media. The due diligence obligations to be performed relate to the insurance contract to be brokered and not to the brokerage contract.

According to Article 4(a) SPG, the mediation of affiliation contracts for institutions of occupational provision does not fall within the scope of the SPG *(see Special Part on insurance undertakings)*.

2. Due diligence obligations

All due diligence obligations under Article 5(1) SPG must in principle be performed by the insurance brokers when the business relationship is established, i.e. when the application for the policy is submitted, but at the latest before the life insurance contract is definitively concluded.

Only in cases where this is necessary to maintain normal conduct of business and a low risk of money laundering and terrorist financing has been established under Article 10 SPG, the verification of the identity of the contracting party or the beneficial owner can be completed after the business relationship has been established. The verification must be carried out as soon as possible after the first contact and, to the extent possible for the insurance broker, it must be ensured that no outflow of assets takes place in the meantime.

The insurance brokers must as a rule identify and verify the policyholder of a life insurance contract as the contracting party for the purpose of Article 6 SPG. If doubts arise about the identity of the contracting party in the course of the business relationship, the identification and verification of the identity of the contracting party must be repeated.

If the policyholder of an existing insurance contract is replaced by a different policyholder – especially as a consequence of assignment – the contracting party and the beneficial owner must be identified and verified again. (Article 15(3) SPV)

In the case of insurance contracts, the natural persons who ultimately pay the insurance premiums are deemed the beneficial owners. They must be identified and verified in accordance with the requirements set out in Article 7 SPG.

Under Article 9(1) SPG, insurance brokers must carry out timely risk-appropriate monitoring of their business relationships to ensure that they are consistent with the business profile (Article 8 SPG). This also includes monitoring the transactions performed in the course of the business relationship, insofar as it is possible for the insurance broker to do so.

The duty to monitor the business relationship is waived only if, after conclusion of the insurance contract between the policyholder and the insurance undertaking, the insurance broker has no access to information on the further course of the insurance contract and no further contact with the policyholder, or if the broker contract does not give rise to any responsibilities for the further support and advice of the policyholder or the handling of changes to the insurance contract.

3. Delegation

In principle, insurance brokers may delegate the performance of due diligence obligations under Article 5(1)(a) to (c) SPG to certain third parties under the conditions of Article 14 SPG. In this context, they must ensure that the data and documents gathered by the third party under the SPG are immediately transmitted to them and that the delegate confirms by signature the conformity of the copies produced with the originals or authenticated copies. Even in the case of delegation, the responsibility for proper compliance with the due diligence obligations always remains with the delegating insurance broker.

The relationship between insurance undertakings and insurance brokers regularly gives rise to a situation in which an insurance undertaking delegates the identification and verification of the identity of the contracting party and the beneficial owner or the creation of the business profile to the insurance broker. In such cases, insurance brokers then in principle assume the due diligence obligations on behalf of the insurance undertaking and at the same time on behalf of themselves as persons subject to due diligence under the SPG.

The information, data, and necessary documents gathered from the policyholder must then be transmitted to the delegating insurance undertaking. In these cases, it is sufficient for the insurance broker to make copies of the relevant documents and data for the broker's own due diligence files and to indicate from the records when the documents and information were transmitted to the insurance undertaking.

4. Internal organisation

Upon being granted a licence as an insurance broker for life insurance, insurance brokers must take appropriate internal organisational measures to ensure compliance with the provisions of the SPG and the associated SPV at all times. The internal organisation must be structured overall according to the type and size of the enterprise as well as according to the number, type, and complexity of the business relationships. This obligation applies regardless of whether life insurance has already been brokered or not.

5. Due diligence inspections

In the case of insurance brokers, the regular due diligence inspection of compliance with the provisions of the SPG and the associated SPV is carried out by the audit office subject to special legislation. Under Article 37a(1)(c) SPV, this audit takes place every four years in principle.

In addition to the inspections carried out by the auditors and audit firms, the FMA audits compliance with the SPG and the SPV and with the guidelines, communications, and instructions issued by the FMA as part of its own on-site inspections. Under Article 37a(3) SPV, the frequency of these inspections is governed by the risk presented by the person subject to due diligence.

Asset management companies (Article 3(1)(i) SPG)

1. General remarks

In the course of the transposition of the EU Anti-Money Laundering Directive, the previous Article 10(1)(i) SPG and the corresponding legal fiction were repealed, so that asset management companies must in principle apply the regular due diligence obligations as persons subject to due diligence.[19]

1.1 Risk-mitigating factors

In line with Article 9a SPG, the person subject to due diligence may take risk-mitigating factors into account. When engaging in portfolio management, asset management companies – unlike banks – do not hold the client's assets themselves, but rather only have access to the client's custody account through a power of attorney for investments. The asset management company buys and sells financial instruments for the client from existing assets for the client's account, but has no influence on inflows or outflows of assets. For certain services provided by an asset management company (e.g. investment advice without a client power of attorney or securities and financial analysis), the company has no access to the client's custody account. For this reason, the usual activities of an asset management company can generally be assumed to entail reduced risks. However, this does not lead to application of simplified due diligence, but rather to the consideration of reduced SPG risks in the context of the application of regular due diligence. Where the relevant aspects apply (see point 1.2 below), asset management companies must perform increased due diligence.

1.2 Enhanced due diligence (Article 11 SPG)

In cases where there is an increased risk of abuse of money laundering, organised crime, or terrorist financing, a stricter standard of due diligence obligations (i.e. enhanced due diligence) must be applied.

The classification of business relationships according to a risk-based approach must in principle be carried out individually by the persons subject to due diligence. Non-exhaustive criteria to be considered for business relationships and transactions with increased risks are listed in Article 11 SPG and Annex II to the SPG. As part of the risk assessment, an asset management company must check in particular whether the following criteria are met:

- Is the contracting party or beneficial owner a politically exposed person (PEP)?
- Is any legal entity serving as the contracting party a recognisably complex structure or does it exhibit a similar pattern?
- Is the residence/habitual abode of the contracting party or beneficial owner[20] in a country with strategic deficiencies or higher geographic risks in accordance with List A[21]?
- Is there an increased transaction volume?

When performing enhanced due diligence, asset management companies must in particular ensure more intensive ongoing monitoring as well as a business profile that satisfies the increased risks (Article 8 SPG and Article 20 SPV).

[19] Pursuant to the Law of 4 May 2017 amending the Due Diligence Act, Article 10, Article 11(1), (2), and (7) SPG, the second sentence of Article 22(1), and Article 22(3) SPG enter into effect on 1 March 2018 and Articles 16, 20, and 20a SPG on 1 June 2018.

[20] In the case of foundations and trusts, as well as corporate bodies held by foundations or trusts, it is sufficient to take into account the residence of the effective founder, settlor, or trustor.

[21] https://www.fma-li.li/files/fma/fma-rl-2013-1-liste-a.pdf

2. Business profile, ongoing monitoring of business relationship, and PEPs

Pursuant to Article 8 SPG and Article 20 SPV, the persons subject to due diligence must establish a business profile. The level of detail of the business profile depends on the degree of risk in the business relationship (Article 20(2) SPV). When applying regular due diligence obligations, asset management companies may take risk-mitigating factors into account in their preparation of the business profile.

Moreover, pursuant to Article 5(1)(d) and Article 9 SPG, persons subject to due diligence must also monitor their business relationships, including the transactions carried out in the course of the business relationship, at a level that is commensurate with the risks involved.

When applying regular due diligence, asset management companies may structure the ongoing monitoring of business relationships in accordance with the risk-mitigating factors listed in point 1.1. Nevertheless, a business relationship in the normal course of business activity (e.g. portfolio management; the applicable requirements for asset management companies in the course of business activity are set out in the Asset Management Act and Asset Management Ordinance) must be given appropriate due diligence attention. If circumstances or transactions arise that deviate from the business profile, simple investigations must be carried out with reasonable effort in accordance with Article 9(3) SPG. If circumstances or transactions arise which give rise to suspicion that assets are connected with money laundering, predicate offences of money laundering, organised crime, or terrorist financing, special investigations must be carried out in accordance with Article 9(4) SPG.

If, in the course of the business relationship, a suspicion of money laundering, a predicate offence of money laundering, organised crime, or terrorist financing arises, the asset management company must immediately comply with its reporting obligation under Article 17 SPG. The responsibility for submitting the report lies with the member of the executive body designated to ensure compliance with the SPG.

This guidance takes precedence over the guidance governing the business profile and ongoing monitoring in the General Part of this Instruction and conclusively governs the interpretation of the corresponding provisions for asset management companies.

The provisions on PEPs set out in Article 11(4) SPG also apply in principle to asset management companies. Contrary to the guidance in point 6 of the General Part of this Instruction, the following applies to asset management companies:

- the PEP check for asset management companies does not cover recipients of distributions, given that asset management companies do not have to identify recipients of distributions, as described in point 4 below; and
- in the case of asset management companies, it is sufficient if the documentation of the PEP check is carried out by a third party (e.g. the principal bank), provided that this third party fulfils the requirements of Article 14(1)(a) or (b) SPG in conjunction with Article 24 SPV. In the case of delegation, however, responsibility for the PEP check remains with the asset management company.

The principles for risk-appropriate monitoring of business relationships are to be implemented as written procedures in the internal SPG instruction or in the organisation manual.

3. Asset management for a fund

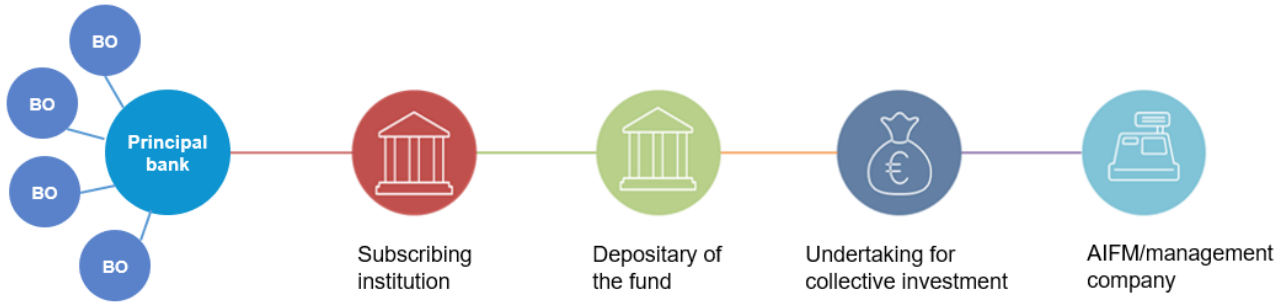
3.1 Where Article 22b(3) SPV applies

Under Article 22b(3) SPV, in the case of business relationships of asset management companies involving units in undertakings for collective investment (UCITS/AIFs) which:

- meet the requirements of Directive 2009/65/EC[22] or Directive 2011/61/EU[23] and which
- have been subscribed or are held by legal entities as defined in Article 3(1)(f)[24] or g[25] SPV, which are or were acting as a direct contracting party in their own name, but for the account of third parties,

the obligations referred to in Article 6(1) SPG[26] and Article 7(1) and (2) SPG[27] shall have been met if the person subject to due diligence:

a) verifies the identity of the subscribing institution from a unit register or a subscription certificate;
b) by adopting a risk-based approach, takes measures to make certain that on the basis of the customer, product and country risk assessment, the risk with reference to money-laundering, organised crime and terrorist financing is minor;[28] and
c) examines the internal control and supervisory measures of the subscribing institution, in order to make certain that the subscribing institution performs appropriate due diligence measures, adopting a risk-based approach, in respect of its own customers as set out in Article 5(1) SPG.[29]



This means that if the conditions set out in Article 22b(3) SPV are met:

- the asset management company must identify its contracting party within the meaning of Article 6(1) SPG, i.e. the undertaking for collective investment; and
- with regard to the identification and verification of the beneficial owner (Article 7(1) and (2) SPG), it is sufficient if the fund in question (represented by its management company/AIFM) confirms in writing to the asset management company that Article 22b(3) SPV applies to the circumstances and, at least once a year, makes a list of the subscribing institutions available to the asset management company. It is not necessary to document for which third-party account (or for which end customer) the subscribing institution is acting. No special form has to be completed in this regard.

In practice, the depositary in any event usually keeps the unit register (on behalf of the management company/AIFM), which means that the depositary has current information on new subscriptions and redemptions.

[22] Directive 2009/65/EG of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
[23] Directive of 8 June 2011 on Alternative Investment Fund Managers (AIFM Directive)
[24] These are banks, investment firms, fund trading platforms, central securities depositories, and insurance undertakings licensed in Liechtenstein
[25] These are banks, investment firms, fund trading platforms, central securities depositories, and insurance undertakings in equivalent jurisdictions as defined in Section IV Annex 1 of this Instruction
[26] Identification and verification of the identity of the contracting party
[27] Identification and verification of the identity of the beneficial owner
[28] This includes in particular the following measures: review of the sanctions lists on sanctioned entities
[29] This includes in particular the following measures: review of the sanctions lists on sanctioned entities

The asset management company must fulfil these obligations at the beginning of the business relationship with a fund. Naturally, the unit register will change over the course of the business relationship. Under Article 7(3) SPG, persons subject to due diligence must repeat the identification and verification of the identity of the beneficial owner if doubts arise over the course of the business relationship concerning the identity of the beneficial owner. In the case of business relationships of asset management companies with funds covered by Article 22b(3) SPV, the FMA considers it risk-appropriate if this repetition takes place at least once a year. In such cases, the fund must send the asset management company an updated unit register annually without being requested to do so. The asset management company must ensure that this is done.

3.2 Where Article 22b(3) SPV does not apply

Where the simplifications in the identification of the contracting party and the beneficial owner pursuant to Article 22b(3) SPV do not apply:

- the contracting party must be identified in the usual manner in accordance with Article 6(1) SPG;
- when identifying and verifying the identity of the beneficial owner, it must be determined for which third-party account (or for which end customer) the subscribing institution is acting. This person or these persons are then considered to be the beneficial owners of the business relationship. If the subscribing institution acts on behalf of one or more natural persons, a written declaration must be issued for natural persons (there is no standard form for this purpose). Where the subscribing institution is acting on behalf of a legal entity under Article 3(1)(a) SPV (corporate or quasi-corporate), Form C may be used, but it must be made clear that it does not reflect the circumstances of the subscribing institution but rather of the legal entity for which the subscribing institution acquired the fund units. Where the subscribing institution is acting on behalf of a legal entity referred to in Article 3(1)(b) (foundation, trust, or similar legal entity), Form T may be used. Here again, it must be made clear that the circumstances of the legal entity for which the subscribing institution has acquired the fund units are being reflected, not those of the subscribing institution; and
- any change to the beneficial ownership of the fund must be documented immediately and the relevant forms must be adjusted.

The simplifications under Article 22b(3) SPV are in particular not applicable to investment undertakings under the Investment Undertakings Act (IUG), non-equivalent third country funds, or subscriptions by institutions from a non-equivalent third country or high-risk country (see Annex 4 SPV).

4. Legal entities established on a discretionary basis

Pursuant to Article 7a SPG, when dealing with legal entities established on a discretionary basis, persons subject to due diligence must obtain sufficient information concerning the persons in whose interest the legal entity has primarily been established or is primarily operated. Asset management companies are exempted from the additional obligation to identify the recipients of distributions pursuant to Article 7a SPG due to the risk-mitigating factors mentioned in the point above.

5. Financial analysis

In principle, asset management companies under Article 3(1)(i) are subject to due diligence with respect to all their business relationships. Within the scope purely of a financial analysis (without investment advice or other activities referred to in Article 3(1) VVG), the activity of the asset management company is limited to the analysis and, as part of this activity, it has neither power of attorney to manage the client's assets nor does it have knowledge of the origin of the assets. An asset management company therefore has no obligation to identify the contracting party or the beneficial owner in a purely financial analysis as explained above or to carry out risk-appropriate monitoring. These due diligence obligations must be fulfilled only if, after the initial conclusion of the financial analysis agreement, an additional activity beyond purely financial analysis (i.e. an activity subject to due diligence as referred to in Article 3(1) VVG) is included in this business relationship.

6. Transitional provisions

The Law of 4 May 2017 amending the Due Diligence Act stipulates that Articles 16, 20, and 20a SPG enter into effect on 1 June 2018.

The transitional provisions also state that asset managers who were exempt from due diligence obligations under the previous Article 10(1)(i) SPG must perform the duties referred to in Article 5(1)(b) in conjunction with Article 7 SPG as from 1 April 2018, which means that the asset managers must identify and verify the identity of the beneficial owner only from 1 April 2018. In the case of existing business relationships to which simplified due diligence under the previous Article 10 SPG was applied, the new due diligence obligations under Article 5(1) SPG must be performed retroactively by 31 December 2018 at the latest.

7. Due diligence inspections

The regular due diligence inspection of asset managers is performed every four years (see Article 37a(1)(c) SPV). Extraordinary inspections are possible at any time.

Service providers for legal entities including liquidators (Article 3(1)(k) SPG)

1. Terminology

- **For the account of third parties** means that the person taking over an activity carries out this activity on behalf of or in the interest of and/or on the instructions of a third party.
- **Officially appointed liquidators** are generally appointed by the Commercial Register and are a member of the administration. They meet the requirements of Article 180a PGR or, as a legal person, have a licence under Article 14(1) of the Trustee Act (TrHG). If a legal person no longer has any governing bodies that meet the requirements under Article 180a PGR, the Commercial Register is responsible for appointing a liquidator. If there are good reasons, the Commercial Register may appoint another suitable person as liquidator upon application or *ex officio*.
- **Regularly appointed liquidators** are persons who do not have to be members of the administration of the legal person concerned, but who meet the requirements of Article 180a PGR. If they are legal persons, they must have a licence under Article 14(1) TrHG. These persons must, however, be appointed by a resolution of the supreme governing body of the legal person. This is often the person who has already held the function under Article 180a of the Persons and Companies Act (PGR).

2. Addressees (Article 3(1)(k) SPG)

2.1 General remarks

The guidance in this Special Part is addressed to natural and legal persons which provide one of the following services on a professional basis for the account of third parties:

- establishment of companies or other legal entities;
- performance of the management or executive function of a company, the function of partner in a partnership or a comparable function in another legal person or appointment of another person for the aforementioned functions;
- provision of a head office, a business, postal or administrative address and other related services for a legal entity;
- performance of the function of a member of a foundation council of a foundation, trustees of a trust or a similar legal entity or appointment of another person for the aforementioned functions;
- performance of the function of nominee shareholder for another person, where the company concerned is not listed on a regulated market and subject to the disclosure requirements in conformity with EEA law or similar international standards, or appointment of another person for the aforementioned functions.

Provision of the above mentioned services gives rise to the duty of due diligence under Article 3(1)(k) SPG; the persons subject to due diligence concerned are referred to as service providers for legal entities. The following may be deemed service providers for legal entities (Article 2(1)(t) SPG):

- professional trustees and trust companies;
- persons with a licence under the Law on the Supervision of Persons under Article 180a PGR;
- persons with a licence under the Business Act that does not authorise the holder to perform activities subject to special legislation.

2.2 Delimitation from lawyers, law firms, and legal agents (Article 3(1)(m) SPG)

The definition in Article 2(1)(t) SPG is intended to cover precisely those professional groups which are subject to due diligence under Article 3(1)(k) SPG. Where, by contrast, lawyers, law firms, and legal agents serve, for instance, as a governing body of a foundation or other legal entity, this activity falls under Article 3(1)(m)(5)

SPG, and those persons are therefore subject to due diligence supervision by the Liechtenstein Chamber of Lawyers. In this context, it should be noted that a lawyer may under no circumstances assume trusts (including as a "co-trustee") or management mandates pursuant to Article 180a PGR, given that these activities are reserved to professional trustees and trust companies pursuant to Article 2(b) TrHG and to persons under Article 3 of the Law on the Supervision of Persons under Article 180a PGR. In practice, the activities performed will generally be "co-governing body activities" of a lawyer, which are to be subsumed under Article 3(1)(m)(5) SPG (on a supplementary basis, see the guidance on liquidators in point 5.1).

The activities enumerated in Article 3(1)(k) SPG are in practice usually carried out by lawyers on the basis of a separate licence as professional trustees or persons under the Law on the Supervision of Persons under Article 180a PGR. To that extent, there is generally a clear assignment on the basis of one of these licences to the due diligence supervision of the FMA. Please note that the definition in Article 2(1)(t) SPG should be understood as comprehensive, which may also include lawyers outside of their authorisation to practise as lawyers when exercising activities pursuant to Article 3(1)(k) SPG. In this context, where a person holds an FMA licence pursuant to special legislation and at the same time authorisation as a lawyer, the licence pursuant to special legislation takes precedence, and accordingly the FMA is responsible for the due diligence supervision of all activities performed as a service provider for legal entities.

Supplementing the guidance in point 4.3, the provisions on the provision of joint services within the meaning of Article 15 SPG do not apply to cooperation between persons and companies with authorisation under the Lawyers Act (RAG) and those with a licence pursuant to special legislation from the FMA, given that the competent authorities differ.

3. Territorial scope of application

Based on the principle of territoriality (see General Part, point 4), Liechtenstein due diligence law is not limited to legal entities domiciled in Liechtenstein. Consequently, the registered office of a legal entity for which service as a governing body is being performed is not decisive for the determination of due diligence. Thus, for example, a professional trustee is also obliged to exercise due diligence for a BVI Ltd if the professional trustee performs activities as a director in or from Liechtenstein.

4. Scope and application of due diligence

4.1 General remarks

The person subject to due diligence must in principle fulfil all due diligence obligations. According to Article 5(1) SPG, these are:

- identification and verification of the identity of the contracting party (Article 6 SPG);
- identification and verification of the identity of the beneficial owner (Article 7 SPG);
- identification and verification of the identity of the recipient of the distribution of legal entities established on a discretionary basis and the beneficiary of life insurance policies and other insurances with investment-related objectives (Articles 7a and 7b SPG);
- establishment of a business profile (Article 8 SPG); and
- supervision of the business relationship at a level that is commensurate with the risk (Article 9 SPG).

If a person is already subject to due diligence as a result of a different activity, no further due diligence obligations arise from an additional activity in the same business relationship (e.g. service as a governing body in addition to service as a representative office in the same business relationship). In particular, this means that in these cases no second due diligence file has to be kept or created for the same business relationship, provided that the due diligence records are located in Liechtenstein. This also applies to cases where the due diligence obligations for different due diligence activities are performed within the company or

group by different domestic legal or natural persons, provided that the same business relationship is involved and the group is audited on a consolidated basis.

This does not affect any reporting obligations under Article 17 SPG.

Example: A group consists of three domestic trust companies A, B, and C. An employee of Trust Company A acts as a member of the foundation council alongside Trust Company B, and Trust Company C provides the representative office. In such a case, only one of the persons subject to due diligence has to maintain the due diligence file.

This interpretation regarding the company- or group-internal exercise of due diligence corresponds in general to Article 15(1) SPG (provision of joint services; see point 4.3). In contrast to the provision of joint services, however, compliance with the following conditions is not mandatory:

- provision of services using the same joint billing and the same business name (Article 15(1) SPG);
- access to the due diligence files at any time (Article 15(3)(a) SPG);
- written agreement (Article 15(3)(b) SPG);
- appropriate monitoring of the proper performance of duties (Article 15(3)(b) SPG).

Due to these simplifications, however, application of Article 31(8) SPG is not provided for. This possibility of exemption from penalty is limited to the provision of joint services under Article 15 SPG. Accordingly, if due diligence is performed within a company or group, all involved persons subject to due diligence are punished in the event of a breach of due diligence law, especially given that all are equally responsible for the performance of due diligence.

Because the company- or group-internal exercise of due diligence is an interpretation of Article 15(1) SPG, the guidance on the assumption of a mandate by a previously involved person subject to due diligence and on recordkeeping in the event of an assumption of a mandate in point 4.3 applies *mutatis mutandis*.

Persons and companies performing their activities on the basis of an authorisation under the RAG cannot make use of this exemption, provided they perform activities jointly with a person or company that operates on the basis of a licence pursuant to special legislation issued by the FMA.

4.2 Identification and verification of the identity of the distribution recipient (Article 5(1)(b^{bis}) SPG)

Already at the time of the establishment of a discretionary legal entity, the persons subject to due diligence must obtain sufficient information concerning the persons in whose interest the legal entity has primarily been established or is primarily operated. The information must be sufficient so that the person subject to due diligence will be able to determine the identity of the distribution recipient at the time of paying out (Article 7a SPG).

The same principles apply to the identification and verification of the identity of the distribution recipient as for beneficial owners (see General Part, point 5.3). In principle, the distribution recipient must be determined for each distribution using Form D and the identity verified by appropriate measures (Article 7a(2) SPG). A document with probative value as referred to in Article 7 SPG (e.g. passport copy) must be obtained to verify identity. Please also refer to FMA Communication 2015/7 concerning identification of the beneficial owners under the Due Diligence Act.

Service providers for legal entities which provide services pursuant to Article 3(1)(k)(2) or (4) SPG to a legal entity established on a discretionary basis must transmit, directly and without being requested to do so, the information obtained (Form D) to other persons subject to due diligence under Article 3(1) SPG, provided that the legal entity in question maintains a business relationship with those persons and the information relates to assets which are booked there. It is sufficient if the original Form D is sent to the other persons subject to due diligence and a copy remains in the service provider's own due diligence file.

4.3 Provision of joint services under Article 15 SPG

In principle, several persons subject to due diligence have the possibility of providing joint services, provided that the conditions of Article 15(1) or (2) SPG are met. This means that the due diligence obligations are performed by the person subject to due diligence who holds the mandate, working alone.

While Article 15(1) SPG applies to all due diligence activities, Article 15(2) SPG is limited to service as a governing body for the account of third parties as referred to in Article 3(1)(k)(2) and (4) SPG (see also the guidance in point 5.2). With respect to the "comparable function" referred to in Article 15(2) SPG, please note that the other activities covered by Article 3(1), such as providing a representative office, cannot be subsumed under that term.[30]

Persons subject to due diligence who do not personally perform due diligence must ensure that:

- they are given access to the due diligence files at any time on request; and
- a person subject to due diligence is appointed by written agreement to perform the duties, and proper performance of the duties is verified appropriately. The written agreement must contain at least:
    - the name or business name of the person subject to due diligence holding the mandate;
    - the name or business name of the person subject to due diligence who does not personally perform due diligence;
    - precise description of the business relationships or occasional transactions for which due diligence is performed by the person subject to due diligence holding the mandate; and
    - rules governing right of access to due diligence files and appropriate verification of compliance.

For business relationships which already existed on 1 September 2017 and in respect of which the provision of joint services applies, the written agreement of the person subject to due diligence who does not personally perform the obligations must be obtained by 1 September 2018. The appropriate verification must take place once the written agreement is available.

The person subject to due diligence who does not personally perform the obligations is not punished if that person has designated a person subject to due diligence by written agreement to perform the obligations and appropriately verifies the proper performance of the obligations (Article 31(8) SPG). This provision also entails in particular that the responsibility for compliance with the due diligence obligations remains with the individual persons subject to due diligence, i.e. also with those who do not personally perform the due diligence.

With regard to the appropriate verification, the FMA is of the view that at least a random check of compliance with the due diligence obligations of the persons subject to due diligence holding the mandate must be carried out (e.g. based on the random checks defined in FMA Guideline 2013/2). Such random checks should be logged for the purpose of traceability. In order to be able to carry out the verification at all, the persons subject to due diligence who do not personally perform the obligations must ensure that they are given access to the due diligence files at any time upon request. This right of access must persist even after the business relationship has ended, namely for the duration set out in Article 20(1) SPG. This entails that those persons subject to due diligence who do not personally perform the obligations are in principle not obliged to keep any client-related or transaction-related documents and records within the meaning of Article 20(1) SPG.

Example: Two professional trustees domiciled in Liechtenstein each provide a member of a foundation council. Under the conditions mentioned above, one of the professional trustees may be "exempted" from the due diligence obligations.

If the person subject to due diligence holding the mandate withdraws from the group of persons subject to due diligence (e.g. due to termination of the employment relationship or death), the remaining persons subject to due diligence who so far have not personally performed due diligence must immediately appoint a new

[30] See remarks in Report and Motion No. 124/2008, 70-71 on the distinction between the activities subject to due diligence of "performing the function of a governing body" and "providing representative offices".

person subject to due diligence holding the mandate from among themselves, or each person must perform due diligence individually.

If the intention is for a person subject to due diligence from the group of persons subject to due diligence to take over the business relationship entirely – irrespective of whether this person is the person subject to due diligence holding the mandate or not – e.g. as a result of a change to another trust company, then this person is not obliged, in light of the person's previous duty of due diligence, to completely perform due diligence again, provided that the person can at least take over a copy of the due diligence files. Given the previous duty of due diligence, this does not qualify as a takeover of a mandate in which a business relationship is taken over by a person subject to due diligence who was not previously involved. Irrespective of this, continued use of the existing due diligence files is permissible only if they comply with the provisions of due diligence law, have been verified, dated, and signed (again).

Due diligence law does not contain any provision on the right to the surrender of the due diligence files vis-à-vis the person subject to due diligence who has so far kept the files. The FMA is of the view, however, that in the event of the termination of the provision of joint services, the person subject to due diligence taking over the mandate must at least be granted access to the due diligence file for the purpose of making copies in accordance with Article 15(3)(a) SPG so that ongoing performance of the mandate in line with due diligence law can be ensured.[31]

With regard to the safekeeping obligation of the other previously involved persons subject to due diligence after termination of the business relationship as referred to in Article 20 SPG, an assessment specific to each case is required. In some cases, it may suffice to grant a right to access the files.

With respect to company- and group-internal performance of due diligence, please refer to point 4.1.

The provisions on the provision of joint services set out in Article 15 SPG do not apply to cooperation between persons and companies which carry out their activities on the basis of an authorisation under the Lawyers Act (RAG) and are therefore subject to the due diligence supervision of the Liechtenstein Chamber of Lawyers (RAK), and persons and companies which carry out their activities on the basis of a licence under special legislation issued by the FMA and which are therefore subject to the due diligence supervision of the FMA, given that the competent authorities differ.

This means, for example, that a professional trustee and a lawyer who are both members of a foundation council must each maintain their own due diligence file.

5. Special aspects of the profession

5.1 Liquidators (Article 3(1)(k)(2) and (4) SPG)

A liquidator must be classified as a governing body of the legal person to be dissolved and is thus subject to due diligence under Article 3(1)(k)(2) or (4) when performing the mandate. Liquidators officially appointed by the Commercial Register in accordance with Article 133 PGR have the same duties and responsibilities in liquidation proceedings as liquidators regularly appointed in accordance with Article 132 PGR.

With regard to the performance of due diligence, however, it makes little sense under the purpose of the SPG for the liquidator to perform all due diligence obligations again for which the previous body was already obliged. This means that the liquidator must obtain access to the due diligence records when taking over the mandate. Should the due diligence records give rise to doubts as to the identity of the contracting party or the beneficial owner, the liquidator must again identify and verify the contracting party or the beneficial owner. If, in the liquidator's opinion, there is no doubt as to the identity, a new identification and verification by the liquidator is not necessary.

[31] According to the judgment of the Supreme Court of 13 June 2014, LES 2014, 181, the due diligence files are assigned to the person subject to due diligence and not to the legal person managed by that person subject to due diligence. To that extent, the persons subject to due diligence involved at least have the right to inspect the due diligence file concerning them.

Furthermore, the liquidator has an unlimited obligation to monitor the transactions carried out in the course of the liquidation in a risk-appropriate manner. In addition, there is in all cases an obligation to submit a suspicious activity report to the FIU under Article 17 SPG if there is a suspicion of money laundering, a predicate offence of money laundering, organised crime, or terrorist financing.

In the event that the liquidator does not find any due diligence records relating to the mandate or is denied access, the liquidator must contact the FMA to determine further steps.

Liquidators appointed by the Court of Justice in the context of initiation of bankruptcy are not subject to due diligence for purposes of the SPG. Although the appointed liquidator may represent the bankrupt company similarly to a governing body, the liquidator may not recognise or settle claims without the court's approval. The liquidator is moreover obliged to obtain the court's instructions for important business transactions.

If a lawyer is appointed as the official liquidator of a legal person to be dissolved, there is a duty of due diligence pursuant to Article 3(1)(m) SPG, so that responsibility for supervision and execution of the SPG does not lie with the FMA, but rather with the Liechtenstein Chamber of Lawyers (Article 23(1)(b) SPG).

5.2 Service as governing body for the account of third parties (Article 3(1)(k)(2) and (4) SPG)

Service as a governing body is subject to due diligence, as are comparable functions (e.g. function of a partner, general manager of a legal entity) exercised on a professional in a fiduciary capacity or for the account of a third party (Article 3(1)(k)(2) and (4) SPG). All other service as a governing body which is not performed for the account of third parties does not constitute an activity subject to due diligence.

"For the account of a third party" generally also means that the person who assumes service as a governing body in fact appears as the governing body, but instead of acting freely, acts on the instructions of a third party working in the background. A further criterion is the interest in which the service as a governing body is performed: If, for example, the purpose of the activity is to manage an operating company as the general manager, i.e. in the exclusive interest of the legal entity, and not to manage assets in the interest of a third party, the service is not for the account of a third party (see Report and Motion No. 124/2008, 31).

A third party may appear in various forms. Third parties may, for example, be beneficiaries of the legal entity or shareholders. In the case of shareholders, the delimitation may be difficult; however, acting for the account of a third party occurs when the shareholders carry out actions or give instructions which are actually reserved to the ordinary general management of the company and which go beyond the rights of shareholders. In the management of a foundation, a trust, or an establishment or trust enterprise structured in a foundation-like manner serving as an instrument for private asset management, the governing body generally acts in the exclusive interest of the beneficiaries, so that it can generally be assumed that it is acting for the account of third parties; this is true irrespective of the domicile of the legal entity.

The latter applies in particular to the assumption of a qualified function as a governing body under Article 180a PGR. In this case, it is always assumed that the service is performed for the account of a third party. This ensures that in legal entities which are not operating companies but primarily serve as instruments for private asset management or were established for public-benefit purposes, at least one person fulfils the due diligence obligations.

This means, for example, that the following situation does not fall under Article 3(1)(k)(2) or (4) SPG: A professional trustee/a person performs the service of a governing body in construction company XY. The person was appointed as a governing body of XY on the basis of (technical) abilities and qualifications (e.g. training as a master builder or special knowledge in the field of construction). The crucial factor here is that the person was appointed to the function on the basis of knowledge of the market, the industry, or the activity carried out. No person in the background is *de facto* acting on the governing body, but rather decisions are taken freely.

This means primarily that the governing bodies of operating companies which carry out a commercial activity should not be subject to due diligence. However, this applies exclusively to cases in which no service is performed as a governing body for the account of third parties within the meaning of Article 3(1)(k)(2) or (4) SPG. It is important in this regard that the governing body actually manages the undertakings and is free to

make business decisions and is not subject to the instructions of a third party. As a rule, such undertakings have substance in the form of their own premises (office, warehouse, etc.) and their own employees.

The possibility of providing joint services under Article 15 SPG should be recalled here (see the guidance in point 4.3).

The establishment of signing authority on a bank account also creates due diligence obligations under Article 3(1)(k)(2) or (4) SPG, where the *de facto* possibility of signing is sufficient. However, it must be taken into account that for persons subject to due diligence only with signing authority (but without the status of a governing body or other function), the monitoring obligation applies only to the extent that they prepare or carry out such transactions for their clients.

Protectors as such are not *per se* subject to due diligence, given that they are not expressly covered by the scope of Article 3(1)(k) SPG. Consequently, the duty of due diligence arises only when protectors, in accordance with their specific powers, are authorised to perform activities in the sense of Article 3(1)(k)(2) or (4) SPG for legal entities. If, for example, transactions may be carried out only with the consent or at the proposal of the protector, i.e. if the protector is involved in the administration of the legal entity, this in any case gives rise to a duty of due diligence. The same applies to the case where the protector is equipped with pure information rights but also with powers of approval with regard to the execution of transactions. Since in such a case the transactions are dependent on the protector's approval or can be prevented by the protector's veto, the protector has full insight into the financial situation of the legal entity and is involved in the settlement process. The protector accordingly has a decisive influence on the decision-making of the legal entity's governing bodies. However, it should be noted that the monitoring obligation applies to the protector only to the extent that the protector is involved in a given transaction.

If, however, the protector is not involved in the transactions of the legal entity, but only has the right, for example, to recall the governing body of the legal entity and to appoint new members, this is not an activity relevant to due diligence, given that there is no connection whatsoever with the settlement of transactions or the management of the business relationship.

If an emergency governing body is appointed so that a legal entity does not have to be liquidated for lack of a governing body when the active governing bodies resign at the same time, this emergency governing body must fulfil the due diligence obligations analogous to a liquidator. See also the comments above on liquidators. Consequently, in view of the purpose of the SPG, the emergency governing body does not have to again fulfil all the due diligence obligations to which the previous governing bodies were obliged. The emergency governing body must obtain access to the due diligence records. Should the due diligence records give rise to doubts as to the identity of the contracting party or the beneficial owner, the emergency governing body must again identify and verify the contracting party or the beneficial owner. Otherwise, no new identification by the emergency governing body is required. In addition, there is an unlimited obligation to ensure risk-appropriate monitoring. In all cases, there is an obligation to submit suspicious activity reports under Article 17 SPG.

5.3 Representative office (Article 3(1)(k)(3) SPG)

Article 3(1)(k)(3) SPG subordinates natural and legal persons to the SPG which act as a representative office for purposes of Articles 239 et seq. PGR.

If the actions of the representative are limited to the mere receipt, forwarding, and storage of declarations, notifications, and documents, there is an obligation to identify and verify the identity of the contracting party and the beneficial owner. The contracting party is the legal entity for which the representative office is provided. No business profile has to be created, and the obligation to carry out risk-appropriate monitoring does not apply, given the lack of a *de facto* possibility of carrying out monitoring. If the persons subject to due diligence have further duties and powers than those described above, the full due diligence obligations pursuant to Article 5(1) SPG come into effect as appropriate to these further duties and powers. Further powers include, for example, the opening or inspection of correspondence received. In such a case, the person subject to due diligence is in a position to carry out the necessary monitoring based on the powers of inspection.

The duty of due diligence is established as soon as a business, postal, or administrative address or other related services are provided. It is not necessary that the legal entities also have their registered office at the address provided. The provision of an address of service is sufficient to give rise to the duty of due diligence. Performance of the activities mentioned above is relevant only for legal entities, not for natural persons.

The obligation to submit reports under Article 17 SPG exists in any case.

5.4 Function of nominee shareholder (Article 3(1)(k)(5) SPG)

Article 3(1)(k)(5) SPG subordinates natural and legal persons which perform the function of nominee shareholder for another person, where the company concerned is not listed on a regulated market and subject to the disclosure requirements in conformity with EEA law or similar international standards.

If the function of a nominee shareholder is limited purely to the position of a partner or member, there is a duty to identify and verify the identity of the contracting party and the beneficial owner. The contracting party is the trustor, not the legal entity whose shares are held in trust. If, in practice, it is *de facto* impossible to monitor transactions when exercising purely the function of a nominee shareholder, the obligation to do so does not apply. In such a case, it is also not necessary to prepare a business profile. In any case, all transactions which are connected with the activity as a nominee shareholder must be monitored, such as dividend distributions. If the person subject to due diligence has more extensive duties and powers than those described above, the full due diligence obligations pursuant to Article 5(1) SPG shall apply as appropriate to those more extensive duties and powers.

The obligation to submit reports under Article 17 SPG exists in any case.

6. Notification of commencement of business activities (Article 3(3) SPG)

Persons subject to due diligence under Article 3(1)(k) SPG, and accordingly service providers for legal entities that perform their activities exclusively pursuant to a licence under the Business Act, must immediately notify the FMA in writing when they have commenced business activities (Article 3(3)(b) SPG). The notification must be transmitted to the FMA at the latest within five working days upon commencement of activity (postage). The FMA provides the Form: Notification of commencement of activity relevant to due diligence on its website to make the notification.

Professional trustees and trust companies as well as persons with a licence pursuant to the Law on the Supervision of Persons under Article 180a PGR are not subject to the notification obligation set out in Article 3(3) SPG, given that they are already subject to due diligence supervision by the FMA in light of their licence under special legislation. However, as soon as this licence as a professional trustee or trust company or person governed by the Law on the Supervision of Persons under Article 180a PGR no longer exists, a person subject to due diligence must comply with the notification obligation set out in Article 3(3) SPG if activities subject to due diligence continue to be performed, e.g. on the basis of a business licence as referred to in Article 3(3)(b) SPG.

Where persons subject to due diligence pursuant to Article 3(3) SPG which hold a licence under the Business Act discontinue their activities entirely, the FMA must be notified immediately in writing.

Casinos (Article 3(1)(l) SPG)

1. Terminology

- **Occasional transaction:** In casino gambling, occasional transactions are defined separately in Article 135(2) of the Casino Ordinance (SPBV) and include:
  - the sale and redemption of chips or gaming tokens;
  - machine payouts;
  - the issuing and cashing of cheques;
  - exchanges of denomination or foreign currency and other cash transactions.
- **Business relationship:** Based on the definition in the General Part, the term "business relationship" is defined separately in Article 136(2) SPBV. According to this definition, a business relationship exists in particular if the casino provides the player with:
  - a chip custody account or a guest account;
  - an electronic carrier medium for game credits which is used for more than one day of gaming and has a credit balance of more than 5 000 Swiss francs;
  - a customer card which is recognised by the casino as a form of identification.
- **Identification** covers establishment and verification of the identity of a person in accordance with the identification method chosen by the casino (Article 25(2) of the Gambling Act (GSG) and Article 135 SPBV in conjunction with Articles 6 et seq. SPV).
- **Identification upon admission** as defined in Article 135(3) SPBV means the identification and documentation of each guest upon entry into the casino. To verify identity, the casino copies the probative document upon first entry into the casino or records it electronically. The casino defines these processes in its internal guidelines.
- **Threshold identification** as defined in Article 135(1) SPBV means the identification and documentation of the guest if, when carrying out occasional transactions as referred to in Article 135(2) SPBV an amount of CHF 2 000 is reached or exceeded. To verify identity, the casino copies the probative document upon first registration or records it electronically. The casino defines these processes in its internal guidelines.
- **Casino** as defined in the GSG is any undertaking (operator) licensed in Liechtenstein which, on a commercial basis, offers the opportunity for gambling, especially at game tables, gambling machines, or similar gaming equipment (Article 3(1)(q) GSG).
- A **gambling game** as defined in the GSG is a game offering the prospect of winnings in return for placement of a bet (Article 3(1)(f) GSG).

2. Addressees (Article 3(1)(l) SPG)

The guidance in this Special Part is addressed to casinos licensed under the GSG which, on a commercial basis, offer opportunities for gambling, especially at game tables, gambling machines, or similar gaming equipment.

These casinos are subject to the SPG (Article 3(1)(l) SPG), and the provisions of due diligence legislation must be applied, where no special rules to the contrary are provided in Articles 134 et seq. SPBV.

3. Territorial scope of application

Based on the principle of territoriality (see General Part, point 4), the due diligence activities carried out by casinos are always subject to due diligence if they are carried out in or from Liechtenstein. In principle, all activities are subject to the Due Diligence Act which consist in participation in gaming operations.

Irrespective of the principle of territoriality under the SPG, casinos licensed under the GSG may offer gambling games abroad in accordance with Article 7 GSG, provided this does not interfere with legal peace in relation with foreign countries.

4. Scope and application of due diligence

4.1 General remarks

The person subject to due diligence must in principle fulfil all due diligence obligations. According to Article 134 et seq. SPBV, these are the following (see also Article 5(1) SPG and Articles 6 et seq. SPV):

- identification and verification of the identity of the player (Articles 135 et seq. SPBV);
- identification and verification of the identity of the beneficial owner (Articles 139 et seq. SPBV);
- creation of a business profile where business relationships under Article 136 SPBV exist (Article 141 SPBV); and
- risk-appropriate monitoring of the business relationship (Articles 142 et seq. SPBV).

This does not affect any reporting obligations under Article 17 SPG.

The extent to which the due diligence obligations must be fulfilled is determined by the risk inherent in the individual business relationship or occasional transaction. With regard to risk assessment and the application of the risk-based approach, please refer to the extensive guidance in FMA Guideline 2013/1 on the risk-based approach under due diligence law.

4.2 Enhanced due diligence obligations (Article 145 SPBV, Article 11 SPG, Annex 2 to Article 9a and 11 SPG)

In cases where there is an increased risk of abuse of money laundering, organised crime, or terrorist financing, a stricter standard of due diligence obligations must be applied.

The classification of business relationships according to a risk-based approach must in principle be carried out individually by the persons subject to due diligence. Criteria that may be considered for business relationships and transactions with increased risks are listed in Article 145(2) SPBV and in Annex 2 Section A SPG. However, these are neither conclusive nor mandatory. This means that the casino itself must define criteria in its internal instructions (see Article 145(1) SPBV) designating business relationships and transactions involving increased risks and correspondingly effective control and monitoring measures for risk mitigation in line with Article 11(1) SPG. In the case of business relationships and occasional transactions in accordance with Article 145(3) in conjunction with Article 11(4) to (6) SPG (contribution of CHF 30 000 or more in a single operation; business relationships and occasional transactions with politically exposed persons (PEPs); complex and unusually large transactions and transaction patterns that have no apparent financial purpose or discernible lawful purpose; business relationships and occasional transactions with contracting parties or beneficial owners domiciled in states with strategic deficiencies), enhanced due diligence obligations must be exercised.

On a supplementary basis, see the detailed guidance in FMA Guideline 2013/1 on the risk-based approach under due diligence law.

The following guidance on the individual due diligence obligations applies specifically to casinos in addition to or in some cases in derogation from the guidance in the General Part. In addition, the guidance in FMA Guideline 2013/1 on the risk-based approach under due diligence law must always be observed.

4.3 Identification and verification of the identity of the player (Article 135 SPBV, Article 6 SPG, Articles 6 et seq. SPV)

The identity of the player (for purposes of due diligence law) must be established for occasional transactions and business relationships and verified by inspecting a document with probative value. The identity document pursuant to Article 25 GSG must be valid within the meaning of Article 7 SPV.

Identification upon admission involves identifying all visitors as soon as they enter the casino for the first time and verifying them against a document with probative value. In the case of threshold identification, the due diligence identification of the player is triggered when an occasional transaction is carried out in accordance with Article 135(2) SPBV, provided the latter reaches the threshold amount of CHF 2 000 (Article 135(1) SPBV). If a business relationship exists, the player must be identified and verified when the business relationship is established (see Article 136(1) SPBV).

Irrespective of whether the casino applies threshold identification or identification upon admission, one-time identification and verification of the identity of the player is generally sufficient. Following identification, the casino must ensure that the transactions relevant to the threshold can be attributed to the player in question (who has already been identified), so that maintenance of a complete due diligence file can be ensured.

The verification of identity by inspection of a document with probative value is generally carried out by means of personal contact. In the case of business relationships without personal contact, personal identification and verification of identity may be replaced by suitable safeguards (Article 137(2) SPBV in conjunction with Article 14 SPV). In this context, please refer to the instruction on safeguards pursuant to Article 14 SPV.

4.4 Identification and verification of the identity of the beneficial owner (Articles 139 et seq. SPBV, Article 2(1)(e) and Articles 7 et seq. SPG, Articles 11 et seq. SPV)

The beneficial owner is always a natural person at whose instigation or in whose interest a transaction is executed or a business relationship is ultimately established.

Casinos must identify and verify the beneficial owner at the latest at the time when the player first makes an occasional transaction in accordance with Article 135(1) and (2) SPBV (Article 139(1)(a) and 2(a) SPBV). In the event that a casino uses the method of identification upon admission pursuant to Article 135(3) SPBV for the identification of players, the casino may also perform the identification of the beneficial owner already upon their first entry into the casino.

Following identification and verification of the identity of the beneficial owner, the casino must ensure that the results of the identification and verification of the beneficial owner can be attributed to the player in question (who has already been identified), so that maintenance of a complete due diligence file can be ensured.

Beyond this, the operator must also identify and verify the beneficial owner behind the player in the following cases:

- upon establishing a business relationship;
- the casino makes bank transfers in favour of the player; and
- when withdrawals are made from guest accounts.

If the beneficial owner originates from a country in which it can be shown that the information required under due diligence law is not used in official documents, the casino must take appropriate measures to verify the missing information. The casino shall document this for the specific player.

4.5 Risk-appropriate monitoring (Articles 142-143 SPBV, Article 9 SPG, Article 22 SPV)

The casino must appropriately monitor occasional transactions and business relationships on the basis of the risk assessment carried out under Article 9a SPG (Article 143(1) SPBV) in accordance with their individual risk and document those transactions and relationships for each player.

Under Article 143(4) SPBV, business relationships require permanent monitoring of the player and the player's transaction activity to ensure that the transactions correspond to the business profile. For this purpose, the operator must prepare documentation for each player.

Likewise, occasional transactions must be monitored and documented (Article 146 SPBV) for each player pursuant to Article 143(2) and (3) SPBV. The casino must monitor gaming operations in such a way that processes designed to prevent identification by artificially splitting the amounts ("smurfing") are detected and lead to the identification and registration of the guest concerned.

In the case of business relationships, business profiles must be classified according to risk categories (Article 141(2) SPBV). Indicators of an increased risk result in particular from the following criteria (Article 145(2) SPBV; Annex 2 Section A SPG):

1. the registered office or place of residence of the player and the beneficial owner or their nationality;
2. the nature and location of the business activity of the player and the beneficial owner;
3. the value of the assets exchanged, bet, or deposited;
4. the value of the assets exchanged back;
5. payments of more than 100 000 Swiss francs from chip custody accounts, guest accounts, or electronic carrier media for game credits;
6. a significant deviation from the customary transaction types, volumes, or frequencies;
7. a significant deviation in the transaction from the business profile in terms of type, volume, or frequency;
8. the country of origin or country of destination of transfers for the benefit of the player;
9. complex and unusual transactions;
10. contribution of CHF 30 000 or more in a single operation.

The operator must intensify its monitoring of business relationships and occasional transactions involving increased risk. Special attention must also be paid to risks arising from the use of new technologies (Article 9(2) SPG).

4.6 Refusal to carry out an occasional transaction and discontinuation of a business relationship

If due diligence cannot be performed, the person subject to due diligence may not enter into the business relationship or carry out the desired transaction. Likewise, an existing business relationship must be terminated if the due diligence obligations cannot be fulfilled. In this case, the termination must be accompanied by sufficient documentation of the outflow of assets. See also the guidance in the General Part, point 7.

In such cases, the casino may under certain circumstances have to carry out a special investigation pursuant to Article 9(4) SPG and examine whether a suspicious activity report under Article 17(1) SPG must be submitted to the FIU or whether the transaction must be refrained from pursuant to Article 18 SPG. Possible indicators of money laundering, organised crime, and terrorist financing are listed in Annex 3 SPV, which may give rise to the need for special investigations. Such suspicious facts may include situations when:

- a player presents false identity documents;
- several identity documents from different countries are issued in the name of the player;

- a chip custody account is opened under a different name;
- a player requests customer cards from the casino under a different name.

Further indications or suspicious facts may also arise from the transactions carried out by a player, in particular if they indicate an unlawful purpose or the financial purpose is not discernible or the transactions appear to have no financial purpose. Examples of this include:

- purchase of a substantial amount of chips by players who leave the casino without playing;
- deceptive transactions using cashless cards;
- if it becomes known that players are making loans to other players.

In addition, indicators exist in the case of transactions that are incompatible with the casino's knowledge and experience of the player. Such a situation may arise in particular if a player, contrary to their previous playing behaviour, suddenly and without plausible reason massively increases their bets or chip purchases or if the amount of the bets deviates significantly from the financial possibilities indicated by the information provided to the casino.

In general, greater attention must be paid to cash flow management, especially the fight against smurfing. An example in the area of denomination switching is when larger amounts of small denomination banknotes or coins are exchanged into large denominations (or vice versa), or when multiple exchanges are made just below the identification threshold. Other areas include the exchange or redemption of money or chips by another player (a "mandated" guest) who is connected to the original player in a way that is not recognisable to the casino. Examples of this would be the successive increase of the slot credit during a slot machine game or the repeated purchase of tokens, followed by a minimal game and then redeeming the credit for banknotes when leaving the casino.

Qualified indicators or suspicious facts arise in all cases in which, for example, a player offers the responsible casino employee (e.g. shift manager at a table game) bribes in the form of chips for a change in the transaction recording form with the aim of reporting lower transactions. The same applies to the request of casino guests for the issue of a confirmation of non-achieved game winnings, the payment of game winnings in foreign currency, or the request to pay out game winnings to a third party.

Appropriate internal processes must ensure that indicators and suspicious facts are investigated immediately, leading to concrete measures by the casino.

5. Special aspects of the profession

5.1 Due diligence concept (Article 11 GSG in conjunction with Article 148 SPBV)

Operators are obliged to maintain a due diligence concept which ensures that the due diligence obligations are fulfilled. The due diligence concept must consist mainly of three components: obligation to identify, monitor, and organise.

5.2 Admission (Article 40 SPBV)

Before a player is admitted to gaming operations, the operator must check the player's identity against the lists of persons subject to a gaming ban (Article 22 GSG; Articles 40, 58, and 142 SPBV). In order to comply with the identification obligation under Article 25 GSG, the operator of a casino must therefore identify all persons and match them with the list of gaming bans and the ISG sanctions lists (lists of persons and countries against which sanctions have been imposed in accordance with the International Sanctions Act) before granting admission to the casino.

From the moment of admission to the casino, the player as a person and the player's transaction activity are subject to constant monitoring by the operator (due diligence obligations). Details are discussed under the preceding points.

5.3 Means of payment and financial transactions (Article 30 GSG)

5.3.1 Non-negotiable cheques (Article 150 SPBV)

With the exception of non-negotiable cheques, the casino may not accept or issue any other type of cheque. If it issues or accepts non-negotiable cheques, it must register the information in accordance with Article 44(1)(a) to (d) SPBV and keep a register of the non-negotiable cheques received and issued (Article 150(1) SPBV).

In the case of a cheque transaction with increased risk in accordance with Article 143(3)(c) in conjunction with Article 145 SPBV, the casino must take effective measures for additional, more intensive monitoring.

5.3.2 Chip custody account (Article 151 SPBV)

The casino may provide a chip custody account to a guest who does not wish to take or change their chips and gaming tokens before leaving the casino. This establishes a business relationship (Article 136(2)(a) SPBV) and, if it has not already done so, obliges the casino to identify the player, clarify the player's beneficial ownership of the assets, create a business profile, and carry out a PEP check. In addition, the special documentation requirements under Article 44(2)(a) to (c) SPBV must be complied with.

If the business relationship involves an increased risk pursuant to Article 145(2) SPBV, the casino must apply the measures for intensified monitoring of the business relationship as laid down in the internal instructions. A case of increased risk must always be assumed *inter alia* in the case of a PEP in accordance with Article 145(3) SPBV in conjunction with Article 11(4) SPG.

The casino maintains a special register of chip custody accounts (Article 151 SPBV).

The chips issued by the casino entitle the player to play and/or exchange only in that casino. If the casino refuses to enter into a business relationship for the reasons set out in Article 5(3) SPG or if it terminates a business relationship that has already been entered into, the chip custody account must be dissolved and the assets repaid exclusively by issuing a non-negotiable cheque.

5.3.3 Guest account (Article 152 SPBV)

The establishment of a guest account gives rise to a business relationship in accordance with Article 136(2)(a) SPBV and is possible only in accordance with Article 152 SPBV. If such a business relationship is established without personal contact (Article 152(1) SPBV), the guest must submit the following documents to the casino using a form letter approved in advance by the Office of Economic Affairs:

- copy of the transfer order with the details of the executing bank and the account holder with the account number and address of residence;
- an authenticated copy of a probative document in accordance with Article 7 in conjunction with Article 9 SPV. If other measures enable the casino to verify the player, these measures must be documented, and the confirmation of authenticity may be waived;
- the declaration on beneficial ownership.

The casino must take appropriate measures to verify the player's address of residence and carry out a PEP check.

When withdrawals are made from guest accounts, the identity of the player and the beneficial owner must be established again and verified. The provisions of Article 152(3) and (4) SPBV in conjunction with Article 10(2) SPV apply *mutatis mutandis* to withdrawals and deposits.

If guest accounts are kept with the casino's principal bank in the form of a collective account, a complete list of the beneficial owners must be kept (Article 152(5) SPBV). If the casino refuses to enter into a business relationship for the reasons set out in Article 5(3) SPG or if it terminates a business relationship already entered into, the assets on the guest account must be transferred back to the bank that previously deposited the money.

5.3.4 Game winnings (Articles 42 and 43 SPBV)

Game winnings may be confirmed by the casino at the request of the player only in accordance with the provisions of Article 42 SPBV for table game winnings and Article 43 SPBV for gambling machine winnings. It must in all cases record the data in accordance with Article 44(3) SPBV.

6. Documentation and internal organisation

The following guidance on documentation and internal organisation applies specifically to casinos in addition to or in some cases in derogation from the guidance in the General Part.

6.1 Documentation (Article 146 SPBV; Article 20 SPG; Articles 27 to 29 SPV)

All forms, documents, and records that arise in connection with compliance with the provisions of due diligence law constitute the due diligence file of a player. The due diligence file includes in particular:

- documents and records which have served to identify and verify the identity of the player and the beneficial owner, in particular copies of the documents with probative value obtained for identification and verification;
- the business profile (in the case of a business relationship under Article 136 SPBV);
- the player-related documentation of occasional transactions and business relationships under Article 143(2) to (4) SPBV;
- any other records indicating transactions and, if applicable, the asset balance;
- documents and records on any simple and special investigations and any documents and records consulted in this connection (including in connection with cases of smurfing);
- the reasons for the application of simplified or enhanced due diligence obligations under Articles 10 and 11 SPG (alternatively, these reasons may be documented in other appropriate internal documents);
- records on the chip custody account in accordance with Article 151 SPBV and the guest account in accordance with Article 152 SPBV;
- documentation on the measures taken under Article 145(1a) SPBV; and
- copies of any reports submitted to the FIU under Article 17(1) SPG.

The customer-related documents, business correspondence, and supporting documents must be kept for ten years after the end of the business relationship or after the transaction has been completed. However, transaction-related records, business correspondence, and supporting documents must be kept for ten years after the transaction has been completed or after the record has been created.

6.2 Internal organisation (Articles 146 et seq. SPBV; 21 SPG; Articles 31 et seq. SPV)

6.2.1 Internal instructions (Article 149 SPBV; Article 21(1) SPG; Article 31 SPV)

The executive body of the casino must issue internal instructions for the concrete fulfilment of the due diligence obligations under due diligence law and bring them to the attention of all employees involved in business relations and occasional transactions.

The instructions must be formulated in such a way that they can serve as a guide for employees in the concrete exercise of due diligence obligations. This means it is usually not sufficient for the instructions to merely reproduce the text of the law or ordinance. Rather, the persons subject to due diligence must formulate the internal instructions specifically for the requirements of gambling operations.

In particular, the internal instructions must set out:

- the processes, measures, and responsibilities referred to in Article 31(2)(a) to (d), (g), (i), and (k) SPV;
- the identification method chosen in accordance with Article 135 SPBV;
- the thresholds referred to in Article 143(2) SPBV;
- the criteria and measures referred to in Article 145(1a) SPBV; and
- the main features of basic and continuing training as referred to in Article 153 SPBV.

6.2.2 Basic and continuing training (Article 153 SPBV; Article 21(1) SPG; Article 32 SPV)

The casino must ensure that its employees receive up-to-date and comprehensive basic and continuing training, to the extent they perform activities subject to due diligence. In particular, all employees of the casino with money and guest contact and related tasks relevant to due diligence, as well as all persons responsible for the preparation and implementation of the due diligence concept (persons with management tasks relevant to due diligence law), are required to complete the mandatory basic and continuing training as referred to in Article 153(1) SPBV.

Depending on their functional level, casino employees who are subject to training must acquire the knowledge of the provisions of due diligence law, the manifestations of money laundering and terrorist financing, the internal measures to prevent money laundering and terrorist financing, as well as data protection that is necessary for the implementation of due diligence law.

7. Due diligence inspections

The external auditors mandated by the casino under Article 37(1) GSG to audit its business activities audits annually as part of its mandate, *inter alia*, whether the conditions for granting the licence are fulfilled on a permanent basis at the casino (Article 38(1)(b) GSG). The annual audit thus includes an inspection of the due diligence concept of the casino in accordance with Article 9(e) and Article 11 GSG in conjunction with Article 148 SPBV.

The external auditors must perform the inspection by applying the specific requirements for mandated due diligence auditors when carrying out due diligence inspections. See the guidance in this regard set out in FMA Guideline 2013/2, Section IV.

The FMA also carries out independent regular inspections of casinos to ensure that they comply with the provisions of the Due Diligence Act. The FMA may also have these inspections carried out by auditors or audit firms. On a supplementary basis, see the guidance in the General Part, point 13.

Members of tax consultancy professions and external bookkeepers (Article 3(1)(n) SPG)

1. Terminology

- **Planning and execution of financial or real estate transactions** as defined in the SPG are, for example, cases in which assets are received or the transfer of assets is facilitated, for example by making accounts, custody accounts, or financial vehicles of any kind available.

2. Addressees (Article 3(1)(n) SPG)

2.1 General remarks

The guidance in this Special Part is addressed to natural and legal persons to the extent that they are professionally involved in the planning and execution of financial or real estate transactions for their clients in the context of their activities as members of tax consultancy professions or external bookkeepers, where such transactions concern:

- buying and selling of undertakings or real estate;
- management of client funds, securities or other assets of the client;
- opening or management of accounts, custody accounts or safe deposit boxes;
- procurement of contributions necessary for the creation, operation or management of legal entities;
- the management of trusts, companies, foundations or similar legal entities.

Provision of these services gives rise to the duty of due diligence under Article 3(1)(n) SPG as a member of a tax consultancy profession or external bookkeeper.

Members of tax consultancy professions may be (Article 2(1)(w) SPG):

- professional trustees and trust companies with a licence for the full exercise of activities;
- auditors and audit firms.

External bookkeepers may be (Article 2(1)(x) SPG):

- professional trustees and trust companies with a licence for the full exercise of activities;
- auditors and audit firms;
- persons with a licence under the Business Act as an accounting or controlling expert (bookkeeper).

Pure tax consultancy and bookkeeping without participation in the planning and execution of the financial and real estate transactions mentioned above is not subject to due diligence.

2.2 Delimitation from lawyers, law firms, and legal agents (Article 3(1)(m) SPG)

Where a lawyer performs tax consultancy activities, due diligence under Article 3(1)(m) SPG applies, so that competence for supervision and enforcement of the SPG is not allocated to the FMA, but rather to the Liechtenstein Chamber of Lawyers (Article 23(1)(b) SPG).

3. Territorial scope of application

Based on the principle of territoriality (see General Part, point 4), Liechtenstein due diligence law is not limited to legal entities domiciled in Liechtenstein. Consequently, the activities enumerated under point 3 are always subject to due diligence if they are performed in or from Liechtenstein, even if the legal entity, real property, or other asset is abroad.

4. Scope and application of due diligence

The person subject to due diligence must in principle fulfil all due diligence obligations. According to Article 5(1) SPG, these are:

- identification and verification of the identity of the contracting party (Article 6 SPG);
- identification and verification of the identity of the beneficial owner (Article 7 SPG);
- establishment of a business profile (Article 8 SPG); and
- supervision of the business relationship at a level that is commensurate with the risk (Article 9 SPG).

If a person is already subject to due diligence as a result of a different activity, no further due diligence obligations arise from an additional activity in the same business relationship (e.g. service as a governing body in addition to service as a representative office in the same business relationship). In particular, this means that in these cases no second due diligence file has to be kept or created for the same business relationship, provided that the due diligence records are located in Liechtenstein. This also applies to cases where the due diligence obligations for different due diligence activities are performed within the company or group by different domestic legal or natural persons, provided that the same business relationship is involved and the group is audited on a consolidated basis.

This does not affect any reporting obligations under Article 17 SPG.

Example: A group consists of two domestic trust companies A and B. An employee of Trust Company A acts as a member of the foundation council, and Trust Company B provides tax consultancy services to the foundation. In such a case only one of the persons subject to due diligence has to maintain the due diligence file.

This interpretation regarding the company- or group-internal exercise of due diligence corresponds in general to Article 15(1) SPG (provision of joint services; see Special Part on service providers for legal entities, point 4.3). In contrast to the provision of joint services, however, compliance with the following conditions is not mandatory:

- provision of services using the same joint billing and the same business name (Article 15(1) SPG);
- access to the due diligence files at any time (Article 15(3)(a) SPG);
- written agreement (Article 15(3)(b) SPG);
- appropriate monitoring of the proper performance of duties (Article 15(3)(b) SPG).

Due to these simplifications, however, application of Article 31(8) SPG is not provided for. This possibility of exemption from penalty is limited to the provision of joint services under Article 15 SPG. Accordingly, if due diligence is performed within a company or group, all involved persons subject to due diligence are punished in the event of a breach of due diligence law, given that all are equally responsible for the performance of due diligence.

Because the company- or group-internal exercise of due diligence is an interpretation of Article 15(1) SPG, the guidance on the assumption of a mandate by a previously involved person subject to due diligence and on recordkeeping in the event of an assumption of a mandate in point 4.3 applies *mutatis mutandis*. Persons and companies performing their activities on the basis of an authorisation under the Lawyers Act (RAG) cannot make use of this exemption, provided they perform activities jointly with a person or company that operates on the basis of a licence pursuant to special legislation issued by the FMA.

5. Special aspects of the profession

5.1 General remarks

According to Article 3(1)(n) SPG, external bookkeepers and members of tax consultancy professions are subject to due diligence if they assist their clients in the planning and execution of financial or real estate transactions involving the activities listed in Article 3(1)(m)(1) to (5) SPG. Bookkeepers or tax consultants become subject to due diligence only if they "actively" participate in such transactions by receiving assets or facilitating the transfer of assets, for example by making accounts, custody accounts, or financial vehicles of any kind available (Report and Motion No. 159/2016, 50). If this is not the case, the bookkeeper or tax consultant is not subject to the duty of due diligence under Article 3(1)(n) SPG.

For example, the mere activity of posting real estate transactions does not constitute "active" participation in real estate transactions. Likewise, pure tax consultancy is not subject to due diligence in connection with transfers of businesses if it does not "actively" participate in the transaction as described above.

5.2 Tax consultancy

Until the revision of due diligence law effective 1 September 2017, the declaration activity of completing a tax return was classified as subject to due diligence, but now no longer triggers due diligence obligations. This is because the mere completion of a tax return cannot, in principle, be connected with the "planning or execution of financial or real estate transactions", which fall under points 1 to 5 of Article 3(1)(m) SPG (Report and Motion No. 159/2016, 48).

The monitoring obligation is limited to those transactions where there is "active" participation of the tax consultant.

5.3 Bookkeeping

The term "external bookkeeper" (Article 3(1)(n) SPG) is further specified in Article 2(1)(x) SPG, referring to the fact that (bookkeeping) services are provided for third parties. This further specification is also reflected in the qualification "external', which refers to the fact that merely services for third parties are relevant, so that internal bookkeeping activity is exempt from due diligence (Report and Motion No. 159/2016, 38).

Accordingly, bookkeeping services provided by an employee of a company or by a group company for other group companies belonging to the group are exempt from due diligence, given that they are internal services.

The necessary data for the business profile can usually be derived from the purpose of the company for which the bookkeeping is performed,. Separate documentation of the business profile is not required, in light of the extract from the Commercial Register available for the purpose of identifying the contracting party. The monitoring obligation is limited to those transactions in which the bookkeeper "actively" participates.

Notwithstanding the remarks made under this point 5, reference should be made on a supplementary basis to Article 3(1)(k)(2) SPG, according to which service providers are obliged to perform due diligence for legal entities which on a professional basis perform the management or executive function of a company, the function of a partner in a partnership, or a comparable function in another legal entity. In the Special Part on service providers for legal entities, it is specifically stated in relation to Article 3(1)(k)(2) SPG that the establishment of signing authority on a bank account creates due diligence obligations in the same way as serving as a governing body for the account of a third party. The *de facto* power to trigger transactions suffices in this regard.

If, for example, a bookkeeper has been granted signing authority on the bank account of a company for which they are responsible for bookkeeping, the bookkeeper must comply with the due diligence obligations set out in Article 5(1) SPG. Accordingly, the identity of the contracting party and the beneficial owner must be established and verified, and a business profile must be created. Separate documentation of the business profile can generally be dispensed with, provided that an extract from the Commercial Register of the company concerned has been presented. The monitoring obligation applies only to the extent that transactions are prepared or executed for customers.

6. Notification of commencement of business activities (Article 3(3) SPG)

Persons subject to due diligence under Article 3(1)(n) SPG, and accordingly members of tax consultancy professions and external bookkeepers that perform their activities pursuant to a licence under the Auditors and Audit Firms Act or the Business Act, must immediately notify the FMA in writing when they have commenced business activities (Article 3(3)(d) and (e) SPG). The notification must be transmitted to the FMA at the latest within five working days upon commencement of activity (postage). The FMA provides the Form: Notification of commencement of activity relevant to due diligence on its website to make the notification.

Persons subject to due diligence referred to in Article 3(1)(n) SPG are subject to the notification obligation set out in Article 3(3) SPG only to the extent that they are not already subject to due diligence supervision by the FMA in light of their licence under special legislation. However, as soon as this licence under special legislation no longer exists, a person subject to due diligence must comply with the notification obligation set out in Article 3(3) SPG if activities subject to due diligence continue to be performed, e.g. on the basis of a business licence as referred to in Article 3(3)(e) SPG.

Where persons subject to due diligence pursuant to Article 3(3) SPG which hold a licence under the Business Act discontinue their activities entirely, the FMA must be notified immediately in writing.

Real estate brokers (Article 3(1)(p) SPG)

1. Terminology

- **Real estate brokers** as referred to in Article 3(1)(p) SPG are any natural or legal person who, for remuneration, has the task of mediating the opportunity to conclude a contract in connection with the acquisition or sale of real estate. This may include, for example, architects, civil engineers, and building trustees.

2. Addressees (Article 3(1)(p) SPG)

The guidance in this Special Part is addressed to real estate brokers, to the extent that their activities include the acquisition or sale of real estate. The provision of this activity gives rise to the duty of due diligence under Article 3(1)(p) SPG.

3. Territorial scope of application

Based on the principle of territoriality (see General Part, point 4), Liechtenstein due diligence law is not limited to legal entities domiciled in Liechtenstein. Consequently, the activities enumerated under point 2 are always subject to due diligence if they are performed in or from Liechtenstein, even if the legal entity, real property, or other asset is situated abroad.

Since implementation of the 3rd Anti-Money Laundering Directive (2005/60/EC) in March 2009, no distinction has been made any longer with regard to the acquisition or sale of domestic and foreign real estate. Therefore, any acquisition or sale of real estate is subject to due diligence.

4. Scope and application of due diligence

The person subject to due diligence must in principle fulfil all due diligence obligations. According to Article 5(1) SPG, these are:

- identification and verification of the identity of the contracting party (Article 6 SPG);
- identification and verification of the identity of the beneficial owner (Article 7 SPG);
- establishment of a business profile (Article 8 SPG); and
- supervision of the business relationship at a level that is commensurate with the risk (Article 9 SPG).

This does not affect any reporting obligations under Article 17 SPG.

5. Special aspects of the profession

In principle, those activities are to be covered by due diligence law in which the real estate broker at any time obtains the power to dispose of the assets of third parties, i.e. for example by receiving assets from the buyer/seller or by making the broker's account available for the settlement of a transaction. If this is not the case, the real estate broker has no duty of due diligence under Article 3(1)(p) SPG.

In the case of architects, engineers, or building trustees, the decisive factor for the activity to fall within the scope of due diligence is likewise the power of disposal over the assets of third parties in connection with the acquisition or sale of real estate. A pure brokerage activity, on the other hand, in which only the buyer and seller are brought together and which at most includes advice on the financing of a transaction, accordingly does not give rise to due diligence, provided that the broker does not at any time acquire the power of disposal over the assets of third parties.

When buying or selling real estate, both the buyer and the seller must be identified as contracting parties.

When buying or selling real estate, the beneficial owners must be identified on both the buyer and the seller side and verified on the basis of risk.

If there is no lasting business relationship as referred to in Article 2(1)(c) SPG, the preparation of a business profile in accordance with Article 8 SPG in conjunction with Article 20 SPV and risk-appropriate monitoring in accordance with Article 9 SPG may be waived. However, the contracting party and the beneficial owner must always be identified and verified on the basis of risk.

6. Notification of commencement of business activities (Article 3(3) SPG)

Persons subject to due diligence under Article 3(1)(p) SPG, and accordingly real estate brokers that perform their activities pursuant to a licence under the Business Act, must immediately notify the FMA in writing when they have commenced business activities (Article 3(3)(f) SPG). The notification must be transmitted to the FMA at the latest within five working days upon commencement of activity (postage). The FMA provides the Form: Notification of commencement of activity relevant to due diligence on its website to make the notification.

Persons subject to due diligence referred to in Article 3(1)(p) SPG are subject to the notification obligation set out in Article 3(3) SPG only to the extent that they are not already subject to due diligence supervision by the FMA in light of their licence under special legislation.

Where persons subject to due diligence pursuant to Article 3(3) SPG which hold a licence under the Business Act discontinue their activities entirely, the FMA must be notified immediately in writing.

Persons trading in goods (Article 3(1)(q) SPG)

1. Addressees (Article 3(1)(q) SPG)

The guidance in this Special Part is addressed to natural and legal persons who trade in goods on a professional basis, provided that payment is in cash or by means of a virtual currency or a token and the amount involved is CHF 10 000 or more. The provision of this activity gives rise to the duty of due diligence under Article 3(1)(q) SPG. The provision of services such as consultancy services does not fall within the scope of Article 3(1)(q) SPG.

2. Scope and application of due diligence

The person subject to due diligence must in principle fulfil all due diligence obligations. According to Article 5(1) SPG, these are:

- identification and verification of the identity of the contracting party (Article 6 SPG);
- identification and verification of the identity of the beneficial owner (Article 7 SPG);
- establishment of a business profile (Article 8 SPG); and
- supervision of the business relationship at a level that is commensurate with the risk (Article 9 SPG).

This does not affect any reporting obligations under Article 17 SPG.

3. Special aspects of the profession

In principle, all professional trading activities involving cash payments of CHF 10 000 or more are to be covered by due diligence law. A trader therefore becomes subject to due diligence irrespective of the sector, the person, and the activity carried out, provided that the criteria of activity on a professional basis and cash payments of CHF 10 000 or more are met.

It is irrelevant whether a transaction is carried out in a single operation or in several operations which appear to be linked. This means that where there is a material and temporal link between several separate transactions carried out by the trader with the same customer, these are regarded as a single transaction within the framework of a business relationship. If no lasting business relationship exists, transactions which are carried out in several operations and which appear to be linked must be considered as a single occasional transaction.

All transactions in which payment is made by other means (e.g. by bank transfer) are not subject to the provisions of Article 3(1)(q) SPG, nor, for example, is a private individual who sells a second-hand vehicle once and receives payment of more than CHF 10 000 (for lack of professional activity).

If there is no lasting business relationship as referred to in Article 2(1)(c) SPG, the preparation of a business profile in accordance with Article 8 SPG in conjunction with Article 20 SPV and risk-appropriate monitoring in accordance with Article 9 SPG may be waived. However, the contracting party and the beneficial owner must always be identified and verified on the basis of risk.

With regard to the special aspects of the profession in connection with virtual currencies or tokens, please refer to the guidance on TT service providers and other persons subject to due diligence with a nexus to services (Article 3(1)(r), (s), and (t) SPG) in the Special Part.

4. Notification of commencement of business activities (Article 3(3) SPG)

Persons subject to due diligence under Article 3(1)(q) SPG, and accordingly persons trading in goods that perform their activities pursuant to a licence under the Business Act, must immediately notify the FMA in writing when they have commenced business activities (Article 3(3)(g) SPG). Commencement of business activities is deemed to be the first action triggering due diligence obligations – i.e. the first acceptance of cash

payments in the amount of CHF 10 000 or more. The notification must be transmitted to the FMA at the latest within five working days upon commencement of activity (postage). The FMA provides the Form: Notification of commencement of activity relevant to due diligence on its website to make the notification.

Persons subject to due diligence referred to in Article 3(1)(q) SPG are subject to the notification obligation set out in Article 3(3) SPG only to the extent that they are not already subject to due diligence supervision by the FMA in light of their licence under special legislation.

Where persons subject to due diligence pursuant to Article 3(3) SPG which hold a licence under the Business Act discontinue their activities entirely, the FMA must be notified immediately in writing.

TT service providers (Article 3(1)(r) SPG) and other persons subject to due diligence with a nexus to TT services (Article 3(1)(s) and (t) SPG)

1. General remarks

The money laundering, organised crime, and terrorist financing risks associated with business relationships involving TT systems arise from the anonymity or pseudo-anonymity of transactions with virtual currencies or tokens, especially in regard to the beneficial owner of the assets, and from the fact that the bulk of these transactions are carried out internationally directly and without financial intermediaries and can therefore evade any form of control.
The risks manifest themselves both in the criminal exploitation of design flaws in virtual currencies and tokens and in investor fraud, especially in initial coin offerings (ICOs) and the use of virtual currencies or tokens for ransomware payments. However, the use of virtual currencies or tokens also poses a threat in other criminal patterns: terrorist financing, laundering of money from the sale of illegal services and products, phishing scams, or even drug trafficking, especially by criminal organisations. Their anonymity makes virtual currencies and tokens suitable for money laundering, organised crime, and terrorist financing.

However, these risks in business relationships involving systems are countered by additional possibilities for combating these risks compared with traditional financial transactions. These possibilities result directly from the use of TT systems and involve examining the history of the virtual currency or token in question ("technical origin of assets").

2. Terminology

- **Identification** means identifying and verifying the identity of a person using documents with probative value (Articles 6 et seq. SPV).
- **Virtual currency** means, according to Article 3(18) of the EU Anti-Money Laundering Directive and the identical formulation in Article 2(1)(z^{bis}) SPG, *"a digital representation of a value that was not issued or guaranteed by any central bank or public body and is not necessarily pegged to a legally established currency and does not have the legal status of a currency or money, but is accepted by natural or legal persons as a means of exchange that can be transferred, saved and traded electronically."*
- **Token**, according to Article 2(1)(c) TVTG, means *"a piece of information on a TT System which:*
  1. *can represent claims or rights of memberships against a person, rights to property or other absolute or relative rights; and*
  2. *is assigned to one or more TT Identifiers (an identifier that allows for the clear assignment of Tokens*[32]*)."*

It should be noted that the concept of "token" goes further than the concept of "virtual currency". For example, a "stable coin" whose value is linked to a legal tender (e.g. CHF) and which is issued against payment of an amount of money meets the definition of electronic money under Article 3(1)(b) of the Electronic Money Act. However, electronic money does not fall within the definition of "virtual currency" because it has the legal status of money. A "stable coin", on the other hand, regularly meets the requirements for a token (piece of information on a TT system; here, the token represents a value derived from the legal tender deposited; the token can be assigned to one or more TT identifiers).

[32] The relationship between a TT identifier and a TT key, which makes it possible to dispose of a token, is comparable to that between a safe deposit box and the corresponding key. Anyone who has the (TT) key can open the safe deposit box and take possession of its contents. The function of the TT identifier relates more to the safe deposit box or to the fact that a token can be assigned (see, generally, Statement of the Government to Parliament No. 93/2019, 23).

This also means that the classification[33] of a token is irrelevant to the subordination of TT services to the SPG.

3. Addressees (Article 3(1)(r), (s), and (t) SPG)

The guidance in this Special Part is addressed to TT service providers subject to due diligence and registration and to service providers subject to due diligence with a nexus to TT services. The performance of these activities gives rise to the duty of due diligence under Article 3(1)(g) to (t) and 3(3)(h) and (i) SPG. This covers the following service providers:

3.1 TT service providers subject to registration

3.1.1 Token issuer

According to Article 2(1)(k) TVTG, a token issuer is a natural or legal person who publicly offers tokens in their own name or in the name of a client.

- **Contracting party:** In the case of the token issuer, both the token buyer and the client are considered to be contracting parties for the issue, given that both must be regarded as placing the order in the sense of the terminology on the contracting party set out in point 2 of Section I.

3.1.2 TT key depositary

According to Article 2(1)(m) TVTG, a key depositary is a person who safeguards TT keys (e.g. private keys) for clients.

This means the TT key depositary has the *de facto* power of disposal over the token and also the authorisation to store the TT key. This gives the TT key depositary a limited power of disposal. Another form of limited power of disposal is the right to initiate transactions on behalf of the customer. It may also be possible for the TT identifier to be accessed via several TT keys. This means it is technically feasible to establish rules governing joint signature (see Report and Motion No. 54/2019, 67).

Typical example applications are (see Report and Motion No. 54/2019, 76-77):

- wallet providers, which store the TT key centrally on a server, thereby reducing the risk entailed by a possible loss of the smartphone;
- offline storage providers, which store TT keys separate from the internet in order to reduce the risk of hacker attacks;
- crypto-exchanges, which initiate the disposal of the tokens directly on behalf of the client via the TT key, allowing trading transactions to be carried out more efficiently.[34]

Ultimately, this means that any person who provides a service on a professional basis within the scope of which they have access to the TT key (private key) of a third party is considered a TT key depositary. This also applies, for example, to persons who, on a professional basis, manage assets[35] for third parties with regard to virtual currencies and tokens.

Persons are exempted who offer the safekeeping of physical wallets without having access to the key themselves (safe deposit services).

[33] e.g. as a payment token, utility token, or investment token, but note that Liechtenstein law does not establish criteria for the classification of tokens.
[34] These crypto-exchanges are thus deemed TT service providers subject to due diligence (Article 3(1)(r) SPG in conjunction with Article 2(1)(m) TVTG) and not operators of trading platforms for virtual currencies and tokens (Article 3(1)(t) SPG).
[35] This asset management does not fall within the scope of the Asset Management Act as long as no tokens are used that exhibit characteristics of a financial instrument under Annex 2 VVG.

3.1.3 TT token depositary

According to Article 2(1)(n) TVTG, a TT token depositary is a person who safeguards tokens in the name and on account of others.

The TT token depositary is of practical relevance in some applications. Firstly, this role is important for transaction accounts. Transaction accounts are used, for example, by crypto-exchanges, custodian banks, etc. to efficiently process a large number of transactions by many clients. The TT token depositary must assign all of its clients' tokens to one or several TT identifiers over which it has the power and right of disposal. The allocation to the customer is done in a – usually separate – database (see Report and Motion No. 54/2019, 77-78).

3.1.4 TT protector

According to Article 2(1)(o) TVTG, a TT protector is a person who holds tokens on TT systems in their own name on account for a third party. This is accordingly a service provider which provides typical fiduciary services within the framework of a TT system. A TT protector can therefore only be a professional trustee under the TrHG.

3.1.5 Physical validator

According to Article 2(1)(p) TVTG, a physical validator is a person who ensures the enforcement of rights in accordance with the agreement, in terms of property law, represented in tokens on TT systems. For example, a client may approach a token producer with the order to tokenise rights to an asset (e.g. a watch) which the client owns, by issuing a token over these rights to the asset. The physical validator ensures a link between the token and the right to property represented therein, for example by taking the watch into safekeeping and enabling the holder of the right of disposal over the token to exercise a right, such as the right of ownership by surrender (see Report and Motion No. 54/2019). The physical validator should clarify, in particular within the framework of the business profile, whether the assets in question correspond to the client's standard of living and subsequently clarify the origin of the assets. The process of tokenisation is generally not to be subsumed as an occasional transaction. It is rather a business relationship with all the associated due diligence obligations.

In a business relationship with a physical validator, the beneficial owner under Article 7 in conjunction with Article 2(1)(e) SPG is the natural person who is ultimately the beneficial owner of the right to be tokenised.

3.1.6 TT exchange service provider

According to Article 2(1)(l^{bis}) SPG, TT exchange service providers are natural or legal persons whose activities consist in the exchange of virtual currencies or tokens against legal tender or other virtual currencies or tokens and vice versa. According to Article 3(1)(r) in conjunction with Article 2(1)(q) TVTG, TT exchange service providers are subject to the SPG. It should be noted that the definitions of TT exchange service provider in the SPG and the TVTG are not entirely grammatically congruent. For the purposes of the SPG, the definition of the TT exchange service provider in Article 2(1)(l^{bis}) SPG applies as *lex specialis*.

The legal construct of the TT exchange service provider includes all service providers who change virtual currencies or payment tokens for other virtual currencies or payment tokens within their own books and hold neither tokens nor TT keys for customers (see also Report and Motion 54/2019, 102). TT exchange service providers do not cover service providers that exclusively conduct foreign exchange transactions. Such service providers are subject to the due diligence obligations as exchange bureau operators

TT exchange service providers which operate exclusively physical exchange machines have to comply with the due diligence obligations only when settling transactions of CHF 1 000 or more, regardless of whether the transaction is carried out in a single operation or in several operations which appear to be connected. The latter implies the following: A prerequisite for use of the relevant thresholds is that the persons subject to due diligence are able to detect if someone attempts to undermine the system by splitting a larger transaction (above the relevant threshold) into several smaller transactions (below the relevant threshold). This in turn requires that information is obtained for transactions even below the thresholds which makes it

possible to identify whether or not there is a connection with any further transactions below the thresholds. Such information can be systematically secured by using an automatic face recognition system, for example. Typical patterns for such procedures are e.g. short time intervals between transactions, the use of one and the same wallet, or transactions that are only just below the threshold value.

3.2 Service providers with a nexus to TT services

3.2.1 Token issuers not subject to registration

This category includes token issuers not subject to the registration requirement set out in Article 12(1) or (2) TVTG (see point 3.1.1).[36]

Token issuers not subject to registration whose registered office or domicile is in Liechtenstein are subject to due diligence in accordance with Article 3(1)(s) SPG provided that they process transactions of CHF 1 000 francs or more, irrespective of whether the transaction takes place in a single operation or several operations between which there appears to be a connection.

Token issuers not subject to registration, but which are subject to due diligence as discussed above, must immediately notify the FMA in writing when they have commenced business activities. The FMA provides the Form: Notification of commencement of activity relevant to due diligence on its website to make the notification.

3.2.2 Operators of trading platforms for virtual currencies and tokens

According to Article 2(1)(z^{ter}) SPG, operators of trading platforms for virtual currencies and tokens are natural or legal persons who operate trading platforms via which their customers transact an exchange of virtual currencies or tokens against legal tender or other virtual currencies or tokens and vice versa, whose role is more than that of a simple intermediary without involvement in payment flows, but which do not store tokens or TT keys on behalf of their customers (Article 3(1)(t) SPG).

Purely decentralised trading platforms without an ability to intervene on the part of the operator must be viewed as equivalent to transactions between private individuals and are not subject to due diligence law (see also Report and Motion No. 54/2019, 103).

This means that "crypto-exchanges" may fall within the following categories of persons subject to due diligence:

- If the crypto-exchange manages the TT keys of its users, it is a TT key depositary (person subject to due diligence under Article 3(1)(r) SPG in conjunction with Article 2(1)(m) TVTG).

- If the crypto-exchange manages the tokens of its users, it is a TT token depositary (person subject to due diligence under Article 3(1)(r) SPG in conjunction with Article 2(1)(n) TVTG).

- If the crypto-exchange manages neither the TT keys nor the tokens of its users and carries out exchange transactions with clients from its own portfolio, it is a TT exchange service provider (person subject to due diligence under Article 3(1)(r) SPG in conjunction with Article 2(1)(q) TVTG or Article 2(1)(l^{bis}) SPG).

- If the crypto-exchange manages neither the TT keys nor the tokens of its users and also does not carry out exchange transactions with clients from its own portfolio, but is able to influence the transactions of the users of the exchange, it is an operator of a trading platform for virtual currencies and tokens (person subject to due diligence under Article 3(1)(t) SPG in conjunction with Article 2(1)(z^{ter}) SPG).

[36] Professional token issuers in Liechtenstein are subject to registration (Article 12(1) TVTG), as are token issuers with a registered office or place of residence in Liechtenstein who issue tokens in their own name or in the name of a client in a non-professional capacity, provided that tokens are issued in the amount of CHF 5 million or more within a period of 12 months (Article 12(2) TVTG).

Trading platforms for virtual currencies and tokens which are subject to due diligence as discussed above must immediately notify the FMA in writing when they have commenced business activities. The FMA provides the Form: Notification of commencement of activity relevant to due diligence on its website to make the notification.

4. Risk assessment

The persons subject to due diligence shall conduct a risk assessment to determine and assess the risks confronting them in respect of money laundering, organised crime and terrorist financing (Article 9a(1) SPG). The risk assessment must pay special attention to the factors for potentially lower or higher risk mentioned in Annexes 1 and 2 (Article 9a(2) SPG).

Taking into account the risk discussion in point 1 above, the following points suggest increased risks for TT services in any case:

Annex 2 Section A(b) SPG: Product, service, transaction or distribution channel risk factors:

- products or transactions that might favour anonymity (point 2)
- non-face-to-face business relationships or transactions, without certain safeguards as referred to in Article 14 SPV (point 3)
- new products and new business models, including new distribution mechanisms, and the use of new or developing technologies for both new and pre-existing products (point 5)

These risk factors, which are inherent in TT services *per se*, mean that there are no minor risks and that the application of simplified due diligence obligations under Article 10 SPG is therefore ruled out in this area.

TT services therefore exhibit at least normal risks and are accordingly at least subject to the application of regular due diligence obligations as set out in point 5.1 of FMA Guideline 2013/1. However, the application of regular due diligence obligations requires that the risks inherent in TT services *per se* can be offset by factors and possible indicators of a potentially lower risk according to Annex 1 Section A SPG, e.g.:

- beneficial owners domiciled in lower risk geographical areas (Section A(a)(3))
- minor value assets and limited scope of transactions executed (Section A(a)(4))
- geographical risk factors (Section A(c))

If this is not the case, or if other factors and possible indicators of a potentially higher risk apply in addition (e.g. other factors according to Annex 2 Section A SPG), then increased risks exist and the application of enhanced due diligence is necessary.

Where risk factors in Annex 1 or 2 SPG are based on "payments" (e.g. Annex 2 Section A(b)(4): payments received from unknown or unassociated third parties), these are to be considered as transactions in the context of TT services. These factors must therefore also be taken into account for transactions of persons subject to due diligence who are TT service providers or service providers with a nexus to TT services.

Two types of transactions with virtual currencies or tokens with increased (pseudo-)anonymity can occur. In the first type, "normal" virtual currencies or tokens are used, but they are structured in a way that prevents information about the native distributed ledger of the virtual currency or token from being inspected. The second type uses virtual currencies or tokens that are specially designed to prevent the traceability of transactions on the public distributed ledger ("privacy coins").[37]

The money laundering, organised crime, and terrorist financing risk is even higher for the virtual currencies or tokens involved in TT services with increased anonymity compared with "normal" virtual currencies or

[37] See also the remarks in Fincen Guidance FIN-2019-G001, 18.

tokens. The question arises in particular as to why there is a need for increased anonymity. Ultimately, each person subject to due diligence must decide for itself within the scope of TT services whether it wants to provide services involving virtual currencies or tokens with increased anonymity or not. In any event, the FMA urges great caution in this regard. As a rule, in addition to comprehensive business profiles, successful special investigations pursuant to Article 9(4) SPG will be necessary in order to be able to check the plausibility of the use of virtual currencies or tokens with increased anonymity. If no plausible use of virtual currencies or tokens can be shown, this will generally trigger an obligation to submit a report to the FIU under Article 17 SPG.

5. Business profile

The business profile pursuant to Article 8 SPG in conjunction with Article 20(1) SPV must also contain the TT identifier for TT services. The TT identifier is the technology-neutral term for the "address" or "public key". The requirements under Article 20(1) SPV are more directed at traditional financial business, such as fiduciary business or private banking, which tend to involve personal contact, a business relationship of long duration, and larger assets. TT services, in contrast, often take place without personal contact, are transaction-related, and tend to involve smaller assets.

For this reason, it is precisely the presentation of the (economic) origin of the assets that is a decisive factor in verifying the identity of the beneficial owner ("to satisfy themselves that the person in question is actually the beneficial owner") under Article 7(2) SPG.

The guidance on the business profile in the General Part of the Instruction applies in this regard. The following guidance in particular applies to the business profile:

- **Economic background of the total assets, including the profession and business activity of the effective contributor of the assets:** In the case of TT services, the profession of the beneficial owner must be stated in all cases. Without knowledge of the profession, the information on the economic origin of the assets can hardly be checked for plausibility. It should also be noted in this context that generic information such as "self-employed" or "employee" is not sufficient.
- **Intended purpose of the assets**: In the case of TT services, this can generally be found in the nature of the service. In the case of higher risks, additional and more detailed information must be captured in the business profile on the basis of risk.
- **TT identifier**: The business profile must include the TT identifiers belonging to the client, i.e. the public keys. If there are several TT identifiers, each must be contained/assigned in the business profile.

Documentation of the economic origin of the assets is especially important from the point of view of money laundering prevention. The question here is exactly how the assets involved in the TT service were generated. A risk-oriented approach can be taken in this respect. In the case of very small amounts, a blanket statement such as "savings", "inheritance", "income from investment in fiat money", or "income from investment in virtual currencies or tokens" is sufficient. For larger amounts, the information must be more detailed and, where necessary, backed up by relevant documents. It is at the discretion of the person subject to due diligence to determine the thresholds above which information regarding the origin of the assets is to be obtained. These thresholds must in all cases be adapted to the risk of the specific business relationship.

The following table provides an example of risk-oriented documentation of the economic origin of assets. These thresholds can be considered to be risk-appropriate only if there are no other risk-increasing factors, however (e.g. CP/BO from List A countries, CP/BO from sensitive sectors, PEPs, complex structures, etc.). If risk-increasing factors are present, higher minimum requirements apply with regard to determining the origin of the assets/background of the total assets, given that the amount of the contributed assets represents only one of the numerous risk factors to be considered as a whole (in all such cases, at least the measures

of the next higher level according to the table below must be applied; under certain circumstances, if several risk-increasing factors are present, it may also be necessary to apply measures above the next higher level).[38]

Amount	**Minimum requirement for "origin of assets" and "economic background of total assets"**
Level 1: Up to CHF 5 000 individual transactions (IT) Up to CHF 10 000 aggregate per year (APY)	• Brief descriptor of the origin of the assets and the economic background of the total assets such as "savings", "inheritance", "income from investment in fiat money", or "income from investment in virtual currencies or tokens" • Professional activity of the beneficial owner
Level 2: CHF 5 001 - CHF 25 000 IT CHF 10 001 - CHF 25 000 APY	Additionally: More detailed description of the economic origin of the assets (free text)
Level 3: CHF 25 001 - CHF 100 000 IT CHF 25 001 - CHF 100 000 APY	• Additionally: Clear description of the source and the amount (in ranges) of income and total assets of the beneficial owner • Additional relevant documents/records where necessary (see point 5.3.3 of FMA Guideline 2013/1)
Level 4: More than CHF 100 000 IT More than CHF 100 000 APY	Detailed business profile incl. relevant documents and records (see point 5.3.3 of FMA Guideline 2013/1)

6. Risk-appropriate monitoring

The persons subject to due diligence must monitor their business relationships, including the transactions performed in the course of the relevant business relationship, in a timely manner, at a level that is commensurate with the risks involved, to ensure that they are consistent with the business profile (Article 9(1) SPG). Depending on the TT service, risk-appropriate monitoring takes different forms:

6.1 Transaction monitoring for TT systems:

With regard to TT services, Article 21(2) SPV provides that in the case of business relationships or transactions with increased risks within the scope of enhanced due diligence, a suitable IT system for transaction monitoring must be set up, with which the transactions can be made traceable in the TT system used ("chain analysis").

The use of a system for checking the history of the virtual currencies or tokens (chain analysis) serves in particular to verify the information provided by a client with regard to the history of the virtual currencies or tokens and to determine whether these are virtual currencies or tokens with increased anonymity (see point 4 above), e.g. involving a "mixer" or "tumbler" for concealment.

[38] The enhanced due diligence obligations described in Article 11(4) to (6) SPG (in particular in connection with politically exposed persons, complex structures/transactions, and countries with strategic risks) must be applied irrespective of the obligation to clarify the origin of the assets on the basis of the thresholds set out in the table.

The use of a system for verifying the history of the virtual currencies or tokens does not *per se* entail the plausibility of the economic origin of the assets, however, even though it may provide important elements in that respect.

6.2 PEP monitoring:

Effective 1 January 2020, TT service providers and service providers with a nexus to TT services subject to due diligence (Article 3(1)(r), (s), and (t) SPG) must in any case use an IT-based system to determine business relationships and transactions with PEPs, irrespective of the number of business relationships (last sentence of Article 21(1) SPV).

6.3 Exchange transactions by TT exchange service providers:

Transactions must be plausible in the context of the business profile. If there are any discrepancies, investigations must be undertaken. Systematic plausibility checks based on a chain analysis may also play a role here. Any necessary investigations must always be carried out before the transaction is executed – even if only a normal risk is assumed.

6.4 Crypto-exchange:

Here, exchange transactions are concluded under civil law via a smart contract between individual users of the trading platform. The person subject to due diligence must ensure, as part of risk-appropriate monitoring, that the transactions correspond to the business profiles. The person subject to due diligence must be able to identify deviations from the information provided at the establishment of the business relationship in terms of transaction volume or amount of assets involved.

6.5 Wallet providers (e.g. TT key depositaries):

As part of risk-appropriate monitoring of the wallet, the person subject to due diligence must ensure that the transactions correspond to the client's business profile. The person subject to due diligence must be able to identify deviations from the information provided at the establishment of the business relationship in terms of transaction volume or amount of assets involved.

7. Documentation

The due diligence files contain in particular the documents and records prepared and consulted to comply with the SPG and the SPV. In the case of business relationships or transactions of persons subject to due diligence involving virtual currencies or tokens, the TT identifier referred to in Article 2(1)(d) TVTG must also be part of the due diligence files pursuant to Article 27(1)(d^{bis}) SPV. The TT identifier is the technology-neutral term for the "address" or "public key".

Depending on the TT service, it must be determined which TT identifiers are relevant. In the case of a TT exchange service provider, for instance, this is the TT identifier of the client who uses an exchange service. In the case of the operator of a trading platform, these are e.g. the TT identifiers of both parties which settle an exchange transaction via the trading platform. In addition, Article 27(1)(c) SPV stipulates that in connection with any investigations pursuant to Article 9 SPG, all documents and records consulted in this connection must be provided.

When TT services are provided, it is also necessary that the data storage for the entire TT system (blockchain data storage) be stored in the system of the person subject to due diligence to ensure that transactions can be traced where necessary. The data can be stored at a central location in the system of the person subject to due diligence and does not necessarily have to be kept in the due diligence file.

8. Internal organisation

The compliance officer, the investigating officer and the responsible member of the executive body as referred to in Article 22(1) SPG must have an in-depth knowledge in matters of the prevention and combating of money laundering, predicate offences of money laundering, organised crime, and terrorist financing as well as data protection law in connection with the token economy, and be familiar with the current developments in those fields (Article 36(1) SPV).

III. Amendments

On 7 May 2019, the following adjustments were made:

General part

- **Point 5.3.: Identification and verification of the identity of the beneficial owner and the recipients of a distribution**

  At the beginning, clarifications have been included which explain the two steps into which the identification and verification of the identity of the beneficial owner are divided.

  In addition, an adjustment was made to clearly state that the identity of the beneficial owner must be verified in any case by means of risk-based and adequate measures. Only in the case of a low risk can the collection of documents with probative value be dispensed with.

  With regard to verification of beneficial ownership itself, the guidance has been adjusted to the effect that, in the case of normal risks, the written declaration of the contracting party is not sufficient as a verification measure. In cases of normal, increased, or high risks, further measures to verify beneficial ownership are required in any case. For the purpose of explaining these measures, various documents are now given as examples or reference is made to the alternative of conducting one's own research by analogy with the explanations in FMA Guideline 2013/1.

  It has also been clarified that the guidance in the Special Part on service providers for legal entities pertaining to the identification and verification of the identity of the distribution recipients applies exclusively to that professional category under the conditions set out in Article 7a(2) and (4) SPG.

- **Point 5.5.2.: Simple and special investigations**

  Clarifications have been included concerning the elimination of unclarified fact patterns and suspicions. In this context, reference is now also made to the case law of the Constitutional Court, which defines the threshold for the offence of money laundering.

  Reference is now also made to the current case law of the Court of Appeal in connection with the submission of suspicious activity reports and of the Court of Justice in connection with the performance of special investigations.

- **Point 8.1.: Delegation**

  Guidance has been added to clarify the concept of the "other person subject to due diligence". In addition, comprehensive guidance has been included which serves to describe in detail the requirements of Article 14(1)(b) SPG.

  Furthermore, the Instruction now contains supplemental guidance on the exercise of due diligence by a "third party", which the delegation designates as such.

- **Point 8.2.: Outsourcing**

  With regard to verification of the conditions under Article 14(1) SPG, a reference has now been added to the analogous application of the guidance on delegation.

- **Point 11.2.3.: Internal functions**

It has been clarified that the responsible member of the executive body must have an in-depth knowledge in matters of the prevention and combating of money laundering, predicate offences of money laundering, organised crime and terrorist financing as well as data protection law.

In addition, the Instruction now also contains guidance on the requirements for appointing a specialised unit for the functions of compliance officer or investigating officer.

Comprehensive guidance has also been added on the separate exercise of the functions of compliance officer and investigating officer. The same has been done for substitution of internal functions. A figure has been integrated to illustrate this comprehensive guidance.

Additional guidance has also been included regarding the notification to the FMA of the appointment and change of function holders (including a deadline of five working days).

Special Part on undertakings for collective investment

- **Point 2.: Duty to update business profile**

  The 30-day time period for updating has been changed to "monthly", and the addition has been included that each business relationship must be recorded.

Special Part on insurance intermediaries

- **Point 1.: Addressees/scope**

  In order to use the wording of the Insurance Distribution Act, editorial adjustments have been made to the activities.

- **Point 2.: Due diligence obligations**

  With regard to risk-appropriate monitoring under Article 9(1) SPG, a formal adjustment has been made to clarify that monitoring of transactions performed in the course of the business relationship must be carried out, but only insofar as it is possible for the insurance broker to do so.

Special Part on asset management companies

- **Point 5.: Financial analysis**

  Guidance has been included to clarify that asset management companies do not have to perform due diligence within the scope purely of a financial analysis.

Special Part on service providers for legal entities including liquidators

- **Point 2.2.: Delimitation from lawyers, law firms, and legal agents**

  To avoid conflicts of competence or overlaps between the supervisory powers of the FMA and the Liechtenstein Chamber of Lawyers, more detailed guidance is now provided. It has been clarified that lawyers are subject to the due diligence supervision of the Liechtenstein Chamber of Lawyers when performing activities as service providers for legal entities permitted under their licence.

It has also been noted that the provisions on the provision of joint services within the meaning of Article 15 SPG do not apply under certain circumstances.

- **Point 4.1.: General remarks**

  With regard to the company- and group-internal exercise of due diligence, additional guidance has been included regarding non-mandatory compliance with the requirements of Article 15 SPG. It has also been clarified that the exemption from punishment under Article 31(8) SPG does not apply in such cases.

- **Point 4.2.: Identification and verification of the identity of the distribution recipient**

  With regard to the verification of the identity of the distribution recipient, the Instruction now contains guidance according to which a document with probative value as referred to in Article 7 SPV must be obtained.

- **Point 4.3.: Provision of joint services**

  Guidance has been included to clarify the distinction between paragraphs 1 and 2 of Article 15 SPG.

  Comprehensive guidance has also been included to clearly govern the situation when the person subject to due diligence holding the mandate leaves the group of persons subject to due diligence and the situation when a mandate is taken over.

  It is also again pointed out that the provisions on the provision of joint services may under certain circumstances not apply between persons supervised by the Liechtenstein Chamber of Lawyers and persons supervised by the FMA.

- **Point 5.2.: Service as governing body for the account of third parties**

  Due to numerous enquiries to the FMA on the subject of the protector and the protector's duty of due diligence, guidance has been included for the purpose of legal certainty which is in line with the FMA's long-standing interpretation and practice.

Special Part on casinos

This Special Part is entirely new and has been integrated into the Instruction.

Special Part on members of tax consultancy professions and external bookkeepers

- **Point 4.: Scope and application of due diligence**

  Analogous to the guidance under point 4.1 in the Special Part on service providers for legal entities, guidance on company- and group-internal performance of due diligence has been included.

Special Part on persons trading in goods

- **Point 1.: Addressees**

  It has been clarified that the provision of services such as consultancy services does not fall within the scope of Article 3(1)(q) SPG.

On 27 December 2019, the following adjustments were made:

General Part

- **Introductory text box**

  Inclusion of Article 21(2) SPV.

- **Point 5.4.:**

  Clarification regarding electronic business profiles.

- **Point 6.:**

  Editorial adjustment in the reference.

- **Point 8.1.:**

  Editorial adjustment, referring to EU Anti-Money Laundering Directive instead of 4th AMLD.

- **Point 11.2.3.:**

  Editorial adjustment in the reference.

- **Point 15.:**

  Change of entry into force of the amendments.

Special Part

- **Persons trading in goods**

  Inclusion of cash payment with virtual currencies or tokens.

- **TT service providers and other persons subject to due diligence with a nexus to TT services**

  Newly included.

On 12 March 2020, the following adjustments were made:

I. General Part

- **Point 5.2.**

  Reference to Section IV Annex 1 (formerly List C).

- **Point 8.1.**

  Reference to Section IV Annex 1 (formerly List C) and deletion of reference to FMA Guideline 2013/1.

II. Special Part

- **Undertakings for collective investment (Article (3)(1)(c) SPG)**

  Reference to Section IV Annex 1 (formerly List C).

IV. Annexes

- **Annex 1 to the General Part**

  Inclusion of Chapter IV Annex 1 (formerly List C).

IV. Annexes

Annex 1

Third countries with due diligence and safekeeping requirements and supervisory standards consistent with the requirements set out in the Anti-Money Laundering Directive

In connection with the following SPG and SPV provisions, direct or indirect reference is made to due diligence and safekeeping obligations and supervisory standards that are consistent with or correspond to the requirements set out in the EU Anti-Money Laundering Directive:

- Article 14(1)(b) SPG (delegation)
- Article 18b(3) SPG (exemption from ban on disclosure)
- Article 3(1)(g) SPV in conjunction with Article 22b(3) SPV (identification of beneficial owner)
- Article 9(b) SPV (confirmations of authenticity)
- Article 24(4)(b) SPV (delegation within the group)
- Article 24a(1)(b)(2) SPV (outsourcing)

The FMA has examined the due diligence and safekeeping obligations and supervisory standards of the following countries and concluded that they are consistent with the requirements set out in the Anti-Money Laundering Directive with regard to financial institutions:[39]

Brazil (BR)	Israel (IL)	South Africa (ZA)
Guernsey (GG)	Japan (JP)	South Korea (KR)
Hong Kong, China (HK)	Jersey (JE)	Switzerland* (CH)
India (IN)	Singapore (SG)	United States of America (US)
Isle of Man* (IM)		

For the countries marked with an asterisk (*), it can be assumed that their systems for combating money laundering and terrorist financing are consistent with the requirements of the Anti-Money Laundering Directive also with regard to non-financial institutions.[40]

The Member States of the European Economic Area (EEA) are *de jure* obliged to implement the due diligence and recordkeeping requirements laid down in the EU Anti-Money Laundering Directive and the supervisory requirements laid down in Chapter VI Section 2 of the EU Anti-Money Laundering Directive. The systems for combating money laundering and terrorist financing in the Member States of the European Economic Area (EEA) can therefore be assumed to meet the requirements of points 1 and 2 of Article 14(1)(b) SPG.

[39] Persons subject to due diligence which are banks, investment firms, undertakings for collective investment, insurance undertakings, insurance brokers, payment service providers, asset management companies, etc.

[40] Persons subject to due diligence which are service providers for legal entities, lawyers, notaries, statutory auditors, external bookkeepers, tax consultants, etc.