

## **FMA Guidelines 2022/05– Licensing of a financial holding company or mixed financial holding company**

Grant of a licence as a financial holding company or mixed financial holding company in accordance with the Liechtenstein Law of 21 October 1992 on Banks and Investment Firms (*Gesetz vom 21. Oktober 1992 über die Banken und Wertpapierfirmen; Bankengesetz, BankG – Banking Act; BA*) and the Liechtenstein Ordinance of 22 February 1994 on Banks and Investment Firms (*Verordnung vom 22. Februar 1994 über die Banken und Wertpapierfirmen; Bankenverordnung, BankV – Banking Ordinance; BO*)

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### **1. General information**

Article 30a<sup>quater</sup> BA establishes a licensing requirement for certain (mixed) financial holding companies. As a result, the scope of supervision on a consolidated basis is shifted from the level of the highest bank within a banking group to the level of the highest licensed (mixed) financial holding company. Financial holding companies thereby become subject to supervisory requirements (Article 41p(1) BA) and must ensure compliance with these requirements on a full or sub-consolidated basis within a banking group (Article 3a(1) BA).

### **2. Competence of the FMA to grant a licence**

Licences for (mixed) financial holding companies are granted by the authority with competence over supervision of the banking group concerned on a consolidated basis. The FMA has competence to grant a licence pursuant to Article 30a<sup>quater</sup> BA if it also has competence pursuant to Article 41b and 41c BA over supervision on a consolidated basis (Article 30a<sup>quater</sup>(1) BA).

Due to the linkage with the competence of the FMA as the consolidated supervisory authority, it is possible that the FMA will also be competent over the grant of a licence according to Article 30a<sup>quater</sup> BA in situations in which the (mixed) financial holding company that requires a licence does not have its registered office in Liechtenstein. Conversely, a situation may also arise in which, although the (mixed) financial holding company that requires a licence has its registered office in Liechtenstein, the FMA is not the consolidated supervisory authority. Under the latter scenario, the application for a licence must be filed with the authority in another EEA Member State with competence over the consolidated supervision of this (mixed) financial holding company that requires a licence.

The FMA may under certain circumstances have competence over supervision on a consolidated basis if the parent company of a bank or investment firm that is supervised by the FMA on an individual basis is a parent financial holding company in an EEA Member State, a mixed parent financial holding company in an EEA

Member State, an EEA parent financial holding company or a mixed EEA parent financial holding company (Article 41c(1) BA).

If at least two banks or investment firms licensed in EEA Member States have as their parent company the same parent financial holding company or mixed parent financial holding company in an EEA Member State or the same EEA parent financial holding company or mixed EEA parent financial holding company, the FMA has competence over supervision on a consolidated basis pursuant to Article 41c(2) BA if:

- a) there is only one bank within the group and the FMA has competence over the supervision of the bank on an individual basis;
- b) there is more than one bank within the group and the FMA has competence over the supervision of the bank with the highest total assets on an individual basis; or
- c) there is no bank within the group and the FMA has competence over the supervision of the investment firm with the highest total assets on an individual basis.

The FMA also has competence over supervision on a consolidated basis if it has competence over the supervision of the bank with the highest total assets on an individual basis or the investment firm with the highest total assets on an individual basis (Article 41c(3) BA).

If the FMA has competence over the supervision of more than one bank within a group on an individual basis, it is thus automatically the consolidated supervisory authority if the total assets of the banks supervised by it exceed in the aggregate the total assets in the aggregate of the banks supervised by another competent authority on an individual basis (Article 41c(4) BA).

If there is no bank within the group and the FMA has competence over the supervision of more than one investment firm within a group on an individual basis, it is the consolidated supervisory authority pursuant to Article 41c(5) BA if it supervises one or more investment firms within the group with the highest aggregated total assets. Conversely – provided that the group does not include any bank – the FMA is not the consolidated supervisory authority if the total assets of one or more investment firms supervised by another competent authority exceed in the aggregate the total assets in the aggregate of the investment firms supervised by the FMA on an individual basis.

### **3. Licensing requirement for financial holding companies**

(Mixed) parent financial holding companies and (mixed) EEA parent financial holding companies that are subject to supervision on a consolidated basis by the FMA according to Article 41c BA need to obtain a licence from the FMA. In addition, other financial holding companies or mixed financial holding companies that are subject to supervision on a consolidated basis by the FMA according to Article 41c also need to obtain a licence from the FMA if they are obliged to comply with the requirements laid down in the BA or the CRR on a sub-consolidated basis and do not fall under the exemption laid down in Article 41c(7) BA.

The licensing requirement for (mixed) financial holding companies applies to all types of financial holding companies, irrespective of their legal form (e.g. company limited by shares, foundation, establishment).

### **4. Licensing requirements**

A licence as a (mixed) financial holding company is only granted if all prerequisites laid down in Article 30a<sup>quater</sup>(6) BA have been fulfilled.

The licence is granted – where necessary, subject to conditions and requirements – by the FMA as the consolidated supervisory authority if:

- a) the strategies and procedures as well as the division of tasks and competences within the group are appropriate or at least suitable for the purposes of compliance with the requirements of the BA and of Regulation (EU) No. 575/2013 on a consolidated or sub-consolidated basis:
  - 1. to manage and coordinate effectively all subsidiaries of the (mixed) financial holding company;
  - 2. to resolve or avoid conflicts within the group; and
  - 3. to implement effectively the group-wide strategies established by the parent financial holding company or mixed parent financial holding company pursuant to Article 30a<sup>quater</sup>(1) BA as well as procedures throughout the entire group;
- b) the organisational structure of the group to which the (mixed) financial holding company belongs does not impair or prevent the effective supervision of subsidiary banks and subsidiary investment firms or of parent company banks or parent company investment firms as regards compliance with their duties on an individual basis, on a consolidated basis and, where applicable, on a sub-consolidated basis. When assessing this criterion, the FMA considers in particular:
  - 1. positioning within the group and the role of the (mixed) financial holding company or mixed financial holding company; and
  - 2. shareholder structure; and
- c) the requirements laid down in Article 26c(1) BA Article 41i BA have been fulfilled.

#### **4.1. Guarantee in respect of the proper conduct of business**

According to Article 41i(1) BA, (mixed) financial holding companies must ensure that the persons who manage them have a good repute and sufficient knowledge, skills and experience in order to perform their tasks. The requirements laid down in Article 17(5), Article 22(5) and (6)(a) BA and the constraints on mandates established by the government according to Article 22(10)(e) BA apply *mutatis mutandis*.

Persons who manage the business include under all circumstances the members of governing bodies who are appointed to represent the (mixed) financial holding companies in accordance with the Liechtenstein Persons and Companies Act (*Personen- und Gesellschaftsrecht, PGR – PCA*). The business of the (mixed) financial holding company must be managed by at least two persons.

For the assessment of guarantees in respect of the proper conduct of business, reference is made to [FMA Communication 2013/07](#).

#### **4.2. Qualifying holdings**

Shareholders with qualifying holdings within the meaning of Article 4(1)(36) of the CRR in the (mixed) financial holding company that requires a licence must satisfy the applicable eligibility requirements in view of the requirement to ensure sound and prudent management (Article 17(5) BA).

Reference is made to Article 26c(1) BA and to the [FMA Guidelines 2017/20](#) with respect to the requirements placed on persons with qualifying holdings and the documents to be submitted by them.

## 5. Licence application and licensing procedure

### 5.1. Licence application

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

The application, including all the requisite documents, must be sent to the FMA. Applicants should refer to supporting documents (enclosures). Applications for a licence are to be submitted to the FMA in hard copy and electronic format.

### 5.2. Information that must be submitted

The following information must be submitted along with the application for a licence as a (mixed) financial holding company (Article 30a<sup>quater</sup>(3) BA):

- a) Organisational structure of the group to which the (mixed) financial holding company belongs, including details of its subsidiaries and where applicable parent company, as well as the registered office and the nature of the operations of the individual companies within the group
- b) Details of the persons who manage the business of the (mixed) financial holding company, including information concerning compliance with the requirements laid down in Article 41i(1) BA
- c) Details concerning compliance with the criteria laid down in Article 17(5) and Article 26c(1) BA with regard to shareholders and members, if the (mixed) financial holding company has a bank as a subsidiary
- d) Internal organisation and division of tasks within the group
- e) Any other details and information requested by the FMA that are necessary in order to carry out the review according to Article 30a<sup>quater</sup>(6) and (7) BA

The application pursuant to Article 30a<sup>quater</sup> BA must sufficiently document compliance with the statutory licensing requirements. In this regard, the following information in particular must be filed along with the application (Article 28(1a) BO):

- a) Documents concerning the origin of funds and the basic ownership structure of the company capital as well as the nature thereof
- b) The applicant's legal form and articles of association
- c) The applicant's registered office and address of the head office
- d) If the (mixed) financial holding company has a bank or investment firm as a subsidiary, the details that must be filed for the review of the criteria laid down in Article 26c BA; if the reliability of the (mixed) financial holding company has already been assessed by another supervisory authority, information concerning its identity and proof of the result of the assessment
- e) The personnel composition of the governing bodies of the (mixed) financial holding company
- f) Proof of the guarantee in respect of the proper conduct of business for the persons who manage the business according to Article 41i BA
- g) A description of the applicant's corporate governance and internal control mechanisms, including administration, risk management and accounting practices, establishing that this corporate management and these control mechanisms and practices are proportionate, appropriate, reliable and sufficient
- h) A declaration from an FMA-recognised firm of auditors that it accepts the mandate of external auditor

The licence is granted in close cooperation between the competent authorities, which work together within the context of consolidated supervision of a group. Accordingly, the information must be submitted to the FMA not only where it is the consolidated supervisory authority but also where the applicant (mixed) financial holding company has its registered office in Liechtenstein, but the FMA is not the consolidated supervisory authority.

### 5.3. Licensing procedure

During the licensing procedure, the FMA undertakes a thorough legal and financial assessment of the applicant's circumstances.

A separate list of any enclosed documents to be filed along with the application must be provided, arranged in numerical order. The documents submitted will be checked carefully to ensure that the formal and substantive requirements are met. The FMA will inform the applicant of any matters that are unclear and need to be corrected.

The applicant should submit the definitive licence application, including all documents both electronically and in writing to the Liechtenstein Financial Market Authority (FMA), Banks Division, Landstrasse 109, P.O. Box 279, 9490 Vaduz, Liechtenstein.

Following receipt of the application, the FMA will send the applicant confirmation of receipt containing details of the FMA contact point.

If there are any changes in material facts during the licensing procedure, the relevant documents must be updated and adjusted in line with the new legal situation and submitted immediately.

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

A fee will be charged in respect of the licensing procedure, as indicated in section 7 of these Guidelines.

The duration of the licensing procedure will depend primarily on the coherence and completeness of the information and the documents provided in the application. As the consolidated supervisory authority, the FMA decides on an application to grant a licence within six months of receipt of the complete application.

All rejections must be communicated to applicants within four months of receipt of the application or, if the application is incomplete, within four months of the provision of the required details (Article 30a<sup>quater</sup>(4) BA).

### 6. Exception from the licensing requirement

The licensing requirement for (mixed) financial holding companies according to Article 30a<sup>quater</sup>(1) or (2) BA does not apply in situations in which not all of the prerequisites laid down in Section 7 are met by the (mixed) financial holding company. Specifically, (mixed) financial holding companies that exclusively hold equity interests and are not operationally active within groups of banks or investment firms should not be subject to the licensing requirement.

In the event that all prerequisites for an exemption from the licensing requirement are met, the (mixed) financial holding companies referred to in Article 30a<sup>quater</sup>(1) and (2) BA must submit an application to the consolidated supervisory authority seeking an exemption from the licensing requirement.

An application for an exemption from the licensing requirement may be filed with the FMA if all of the following prerequisites are met (Article 30a<sup>quater</sup>(7) BA):

- a) The operations of the financial holding company consist exclusively in the acquisition or holding of equity interests in subsidiaries or, with regard to a mixed financial holding company, the principal operations in relation to banks, investment firms or financial institutions consist exclusively in the acquisition or holding of equity interests in subsidiaries. If there are any other (incidental) operations (such as maintaining liquidity on the money or capital market, asset structuring for persons that are not owners of the holding company or beneficiaries of the foundation), Article 30a<sup>quater</sup>(7) BA is not applicable.
- b) The (mixed) financial holding company has not been designated as a resolution entity within one of the group's resolution groups in accordance with the resolution strategy established by the resolution authority under the Liechtenstein Act of 4 November 2016 on the Recovery and Resolution of Banks

and Investment Firms (*Sanierungs- und Abwicklungsgesetz*, SAG; RRA) or by another resolution authority under Directive 2014/59/EU<sup>1</sup>.

- c) A subsidiary bank has been designated in place of the financial holding company and is legally responsible for ensuring that the group complies with supervisory requirements on a consolidated basis. The subsidiary bank must have all necessary resources and legal powers (in particular power of control over the other group entities, incl. affiliates) in order to ensure that these obligations are effectively met.
- d) The (mixed) financial holding company is not at any time involved directly or indirectly in any commercial, operational or financial decisions that have effects on the group or any of its subsidiaries that are banks, investment firms or financial institutions.
- e) There is no impediment to effective supervision of the group on a consolidated basis.

The wording used in letter d, which states that the financial holding company “is not at any time involved directly or indirectly in any commercial, operational or financial decisions”, must be interpreted from an operational perspective and also in a strict sense. The mere grant of voting or veto rights to representatives of the holding company within the management body of the bank or investment firm amounts to direct involvement. In the event of doubt, any indirect involvement, such as participation in discussions of the management body or overlaps purely in terms of personnel, for instance where close associates work at the same time in the management bodies of both the (mixed) financial holding company as well as the bank or investment firm, must also be construed as “involvement” within the meaning of Section 7(d). In addition, the prerequisite of “involvement” must be interpreted broadly in relation to the group or subsidiary, especially as no materiality thresholds have been stipulated with regard to involvement. Thus, even minor involvement may fulfil the prerequisite (*Berichte und Anträge der Regierung an den Landtag* [reports and motions submitted to the Landtag, i.e. Parliament, by the government], BuA 2021/89).

On the other hand, Section 7(d) does not cover fundamental (strategic) rights under company law, such as decisions relating to significant core strategies taken within the general meeting, for instance concerning a realignment of the business model or concerning a planned merger or demerger (BuA 2021/89).

All information necessary to establish fulfilment of the prerequisites laid down in Article 30a<sup>quater</sup>(7) BA must be filed by the (mixed) financial holding company along with the application for an exemption from the licensing requirement.

According to Article 30a<sup>quater</sup>(9) BA, irrespective of whether or not they hold a licence, all financial holding companies must submit certain information each year to the FMA in order to enable an assessment as to whether the prerequisites for the licensing requirement or the exemption from the licensing requirement are still met. If the prerequisites for an exemption are no longer met, the financial holding company must file an application for a licence in accordance with Section 12.

If the FMA establishes as the consolidated supervisory authority that the prerequisites for an exemption from the licensing requirement pursuant to Article 31a<sup>quater</sup>(7) BA are not or are no longer met, the (mixed) financial holding company must apply for a licence pursuant to Article 31a<sup>quater</sup>.

## 7. Charges

### 7.1. Licensing fee

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<sup>1</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012, of the European Parliament and of the Council (OJ L 173 of 12 June 2014, p. 190).

The fee for the granting of the licence for a (mixed) financial holding company is CHF 50,000 (Article 30 in conjunction with Annex 1(A)(1)(d) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz, FMAG – FMA Act*).

Notwithstanding the foregoing, the fee for the granting or refusal of a licence for (mixed) financial holding companies in existence before 1 May 2022 is CHF 30,000.

## **7.2. Taxes**

General information on the taxation of banks and investment firms may be obtained from the Liechtenstein Tax Administration ([www.stv.llv.li](http://www.stv.llv.li)).

## **7.3. Commercial Register registration fee**

The fees chargeable for registration in the Commercial Register and public certification will be as set forth in the Liechtenstein Land and Commercial Register Fees Ordinance (*Verordnung über die Grundbuch- und Handelsregistergebühren*).

## **8. Expiration and withdrawal of authorisation**

The rules governing the expiration and withdrawal of a licence are set out in Article 30a<sup>septies</sup> and Article 30a<sup>octies</sup> BA.

## **9. Data protection**

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data on the free movement of such data, and repealing Directive 95/46/EC) and in line with applicable data protection law.

All information regarding the processing of personal data, including details about the purpose of processing, the data controller and the rights of data subjects can be found in the FMA Privacy Policy, accessible at: [www.fma-li.li/en/fma/data-protection/fma-privacy-policy.html](http://www.fma-li.li/en/fma/data-protection/fma-privacy-policy.html)

## Annex 1 – Legal basis

- Liechtenstein Law of 21 October 1992 on Banks and Investment Firms (*Gesetz vom 21. Oktober 1992 über die Banken und Wertpapierfirmen; Bankengesetz, BankG – Banking Act, BA*)
- Liechtenstein Ordinance of 22 February 1994 on Banks and Investment Firms (*Verordnung vom 22. Februar 1994 über die Banken und Wertpapierfirmen; Bankenverordnung, BankV – Banking Ordinance, BO*)
- Liechtenstein Persons and Companies Act of 20 January 1926 (*Liechtensteinisches Personen- und Gesellschaftsrecht vom 20. Januar 1926, PGR – PCA*)
- Liechtenstein Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing (*Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung, SPG – Due Diligence Act, DDA*)
- Liechtenstein Ordinance of 17 February 2009 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing (*Verordnung vom 17. Februar 2009 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung, SPV – Due Diligence Ordinance, DDO*)
- FMA Communication 2013/07 – Guarantee in respect of the proper conduct of business (*FMA-Mitteilung 2013/07 – Gewähr für einwandfreie Geschäftstätigkeit*)
- FMA Guidelines 2017/20 – Prudential assessment of qualifying holdings (*FMA-Wegleitung 2017/20 – Aufsichtsrechtliche Beurteilung von qualifizierten Beteiligungen*)
- FMA Guidelines 2017/10 – Obligations regarding equity capital and capital requirements under the CRR/BA/BO (*FMA-Wegleitung 2017/10 – Pflichten in Bezug auf die Eigenmittel und Eigenmittelanforderungen gemäss CRR/BankG/BankV*)
- FMA Guidelines 2017/07 – Liquidity requirements under the CRR/CRD IV (*FMA-Wegleitung 2017/07 – Liquiditätsanforderungen gemäss CRR/CRD IV*)
- FMA Guidelines 2017/06 – Preparation of restructuring plans (*FMA-Wegleitung 2017/06 – Erstellung von Sanierungsplänen*)
- Reporting: <https://www.fma-li.li/de/finanzintermediare/bereich-banken/banken-und-wertpapierfirmen/meldewesen/meldekalendar.html>.

**Annex 2 – Checklist**

