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**Law**

of 24 November 2006

**on Supervision of Institutions for  
Occupational Retirement Provision  
(Pension Funds Act; PFA)**

I hereby grant my consent to the following Resolution adopted by Parliament:

**I. Object, purpose, scope, and definitions**

## Article 1

*Object and purpose*

1) This Act governs the taking-up and pursuit of activities carried out by institutions for occupational retirement provision (pension funds) and in particular aims to protect the members and beneficiaries as well as confidence in the Liechtenstein insurance and financial system.

2) It also serves to implement Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (EEA Compendium of Laws: Annex IX - 30cb.01).

## Article 2

*Scope; principle*

1) This Act shall apply to institutions which operate occupational retirement provision in Liechtenstein or from Liechtenstein; the Act shall be without prejudice to special legislation on occupational pensions.

2) The Financial Market Authority (FMA) shall be authorized to exempt specific institutions from the scope of this Act, provided that no need for supervision exists in such individual cases and the interests of those involved are not endangered thereby.

3) This Act shall be subject to special rules set out in international treaties.

## Article 3

*Institutions exempt from the scope of the Act*

This Act shall not apply to:

- a) institutions which operate on a pay-as-you-go basis;
- b) institutions and undertakings subject to the supervision of banks, insurance undertakings, securities services, or other supervision pursuant to special legislation; this provision shall be subject to article 4;
- c) companies using book-reserve schemes with a view to paying out retirement benefits to their employees;
- d) institutions where employees of the sponsoring undertakings have no legal rights to benefits and where the sponsoring undertaking can redeem the assets at any time and not necessarily meet its obligations for payment of retirement benefits.

## Article 4

*Undertakings operating direct life insurance*

1) This Act shall apply to insurance undertakings operating direct life insurance to the extent that their occupational retirement provision business is affected, with the exception of article 7, paragraph 1(b) and articles 9 and 11.

2) Occupational retirement provision shall be operated separately from the other activities of the insurance undertaking. In such a case, the insurance undertaking shall establish a separate accounting series; its assets and liabilities shall be limited to activities in the context of retirement provision benefits and related activities.

3) The provisions of insurance legislation concerning technical provisions and their funding as well as information requirements vis-à-vis policyholders shall not apply to the occupational retirement provision business of insurance undertakings under paragraph 1.

## Article 5

### *Definitions*

1) "Pension scheme" means a contract, an agreement, a trust deed, or rules stipulating which retirement benefits are granted and under which conditions.

2) "Retirement benefits" means benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence, or death.

3) "Biometric risks" means risks linked to death, disability, and longevity.

4) "Institution for occupational retirement provision (pension fund)" or "institution" means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking for the purpose of providing retirement benefits on the basis of an agreement in the context of an occupational activity.

5) "Home Member State" means the Contracting Party to the EEA Agreement in which the institution has its registered office and its main administration or, if it does not have a registered office, its main administration.

6) "Host Member State" means the Contracting Party to the EEA Agreement whose social and labor law is applicable to the relationship between the sponsoring undertaking and members.

7) "Sponsoring undertaking" means any undertaking or professional association, regardless of whether it includes or consists of one or more

legal or natural persons, which acts as an employer or in a self-employed capacity and which pays contributions into an institution for occupational retirement provision.

8) "Members" means persons whose occupational activities entitle or will entitle them to retirement benefits in accordance with the provisions of a pension scheme.

9) "Contracting Party to the EEA Agreement" means a State for which the Agreement on the European Economic Area has entered into force.

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

## **II. Taking up business activities, preconditions for business activities**

### Article 6

#### *Licensing requirement*

1) Institutions for occupational retirement provision subject to this Act shall be required to hold a license by the FMA prior to taking up business activities.

2) Institutions for occupational retirement provision with registered offices in another Contracting Party to the EEA Agreement shall not require a license, provided that they meet the special conditions under article 21.

### Article 7

#### *License application*

1) Institutions for occupational retirement provision wishing to obtain a license for business activities shall submit an application to the FMA together with a business plan; this business plan must contain the following information and evidence in particular:

a) formation of the institution in the legal form of a registered foundation, a company limited by shares, a European Company (Societas Europaea), or a cooperative society, and evidence that both

- the registered office under the articles of association and the main administration of the institution are situated in Liechtenstein;
- b) purpose and organization of the institution, whereas the purpose of the company must be limited to retirement provision and activities immediately connected therewith;
  - c) articles of association;
  - d) necessary information concerning capital resources and solvency;
  - e) commitment by the sponsoring undertaking to provide capital cover where it has agreed to a benefit;
  - f) information on identity and level of participation of beneficial owners in the institution and the sponsoring undertaking;
  - g) evidence of the professional qualifications and personal integrity of the board of directors or foundation council and of the general management to direct an institution, and equivalent evidence for consulted advisors;
  - h) information necessary to assess the personal integrity and the professional qualifications of the responsible actuary;
  - i) information on the technical provisions, whereas an actuary or other specialist in this field must certify that the technical provisions are calculated on the basis of recognized actuarial methods;
  - k) statement of the principles and procedures of investment policy;
  - l) information on custody of the investments and the depositary to be appointed;
  - m) contracts or other arrangements according to which the business activities or parts of the business activities are to be delegated to third persons (outsourcing), whereas the main administration, including accounting, must remain in Liechtenstein;
  - n) type of risk borne by the institution and envisaged reinsurance coverage;
  - o) budgeted balance sheets and budgeted income statements for the first three business years;
  - p) functioning and proper rules governing each pension scheme operated by the institution;
  - q) information provided to members and beneficiaries concerning subparagraph (p) and concerning the conditions according to which the pension scheme functions;
  - r) evidence of appointment of an external audit office under article 30;

- s) presentation of all other documents and information demanded by the FMA for purposes of proper supervision.
- 2) The Government shall provide further details by ordinance.

#### Article 8

##### *Legal separation between sponsoring undertakings and institutions for occupational retirement provision*

1) Sponsoring undertakings and institutions as well as their assets and account books shall be legally separate and kept according to the requirements set out by the FMA.

2) In the event of bankruptcy of a sponsoring undertaking, the assets of an institution shall be treated *mutatis mutandis* as a separate bankruptcy estate in accordance with article 45 of the Bankruptcy Code.

#### Article 9

##### *Minimum capital*

A domestic institution for occupational retirement provision must maintain minimum capital guaranteeing permanent fulfillment of the institution's obligations. This minimum capital may be paid up in Swiss francs or the equivalent in euros or U.S. dollars. The FMA shall determine the requisite minimum capital on a case-by-case basis, taking into account the risks to be covered and the quality of risk management in particular.

#### Article 10

##### *Technical provisions*

1) Institutions shall be required to establish at all times in respect of the total range of their pension schemes sufficient technical provisions and to determine consistent methods and principles of calculation of the technical provisions in a comprehensible manner.

2) The Government shall issue rules governing the types and amounts as well as the funding of technical provisions.

## Article 11

*Buffer*

1) Institutions operating pension schemes such that they underwrite the liability to cover against biometric risk themselves or guarantee a given investment performance or a given level of benefits must hold on a permanent basis additional assets above the technical provisions to serve as a buffer.

2) The Government shall issue rules concerning the amount of the buffer provided for in paragraph 1 and calculation of the minimum amount of the additional assets.

## Article 12

*Custody of assets*

1) Institutions shall appoint a depositary for the custody of their investments; such depositary must have a license authorizing it to perform the activities concerned. The depositary may also be domiciled in another Contracting Party to the EEA Agreement; if a demonstrated interest exists, the FMA may also approve depositaries outside the Contracting Parties to the EEA Agreement.

2) The depositary must comply with the instructions of the institution. If the depositary determines that an instruction violates legal requirements, it shall inform the institution thereof in writing and, should the instruction not be revoked, notify the audit office within a useful time period.

3) The depositary may delegate one or more of its tasks to third parties. Delegation to third parties shall not relieve it of its liability. For depositaries that are institutions within the meaning of banking legislation, the rules under the special legislation shall apply. Article 7, paragraph 1(m) shall apply *mutatis mutandis* to the outsourcing of areas of business.

4) On a case-by-case basis, the FMA may require separate custody of assets, should the interests of members and beneficiaries appear endangered.

## Article 13

*Responsible actuary*

- 1) Institutions shall appoint a responsible actuary who is responsible for actuarial matters.
- 2) The FMA may grant an exemption to paragraph 1, provided that the institution does not bear any technical risk.

## Article 14

*Board of directors and foundation council; General management*

- 1) At least one member of the board of directors or the foundation council and of the general management must be a Liechtenstein citizen or a citizen of a Contracting Party to the EEA Agreement or of Switzerland, or be deemed equivalent pursuant to an international agreement. With respect to the member of the general management, the FMA may permit exceptions in cases worthy of consideration.
- 2) The members of the board of directors or the foundation council and of the general management must, on the basis of their residence, be capable of actually and properly performing their function and their responsibilities.

## Article 15

*Granting of license*

A license for business activities shall be granted if an institution meets the legal requirements. The license may be granted subject to conditions.

## Article 16

*Refusal of license*

- A license for business activities may be refused if:
- a) the license application is incomplete;
  - b) the available facts indicate that the members of the board of directors or the foundation council or of the general management of an institution or their consulted advisors do not guarantee the requisite professional qualifications or personal integrity; or



- c) according to the materials submitted and information provided, the concerns of the members and beneficiaries are not sufficiently met, or the obligations arising from the pension schemes are not shown to be capable of being met on a permanent basis.

#### Article 17

##### *Register entry*

- 1) The FMA shall enter institutions receiving a license for business activities in a special register kept by the FMA.
- 2) The register shall be public and may be viewed by means of a retrieval procedure.

### **III. Cross-border activities**

#### Article 18

##### *Principle*

- 1) Undertakings with registered offices in Liechtenstein shall be allowed to sponsor institutions for occupational retirement provision authorized in other Contracting Parties to the EEA Agreement.
- 2) Institutions for occupational retirement provision authorized in Liechtenstein may also be sponsored by undertakings with registered offices in another Contracting Party to the EEA Agreement.
- 3) The provisions of this article shall be subject to the social and labor legislation on the organization of pension schemes applicable in the respective Contracting Parties to the EEA Agreement.

#### Article 19

##### *Prior authorization*

A domestic institution planning to accept a sponsoring undertaking with registered office in another Contracting Party to the EEA Agreement shall obtain prior authorization by the FMA.

## Article 20

*Notification requirement*

With a view to authorization under article 19, the institution shall notify the following information:

- a) the host Member State(s);
- b) the name of the sponsoring undertaking;
- c) the main characteristics of the pension scheme to be operated for the sponsoring undertaking.

## Article 21

*Procedure for taking up cross-border activities*

1) Upon receipt of the information set out in article 20, the FMA shall, in addition to the legal permissibility of the operations, review the appropriateness of the administrative structure and the financial situation of the institution as well as the personal integrity and professional qualifications of the general management with respect to the operations proposed in the host Member State.

2) If no doubts arise, the FMA shall within a period of three months of receiving all the information referred to in article 20 communicate that information to the competent authorities of the host Member State and at the same time inform the institution.

3) The competent authorities of the home Member State shall, within two months of receiving the information referred to in article 20 and if appropriate, comment on the proposed operations and inform the FMA of the requirements of social and labor law relevant to the field of occupational retirement provision under which the pension scheme sponsored by an undertaking in the host Member State must be operated; the FMA shall communicate this information to the institution.

4) On receiving the communication referred to in paragraph 3, or if no communication is received from the competent authorities on expiry of the period provided for in paragraph 3, the institution may start to operate the pension scheme sponsored by an undertaking in the host Member State in accordance with the social and labor law to be observed and other relevant requirements.

5) The entry in the register under article 17 must list all Contracting Parties to the EEA Agreement in which an institution is authorized to perform cross-border activities.

6) Paragraphs 1 to 4 shall apply *mutatis mutandis* to institutions with registered offices in another Contracting Party to the EEA Agreement.

#### Article 22

##### *Information requirements*

Institutions sponsored by undertakings with registered offices in another Contracting Party to the EEA Agreement shall be subject to the information requirements under article 33 in respect of the members and beneficiaries concerned.

#### Article 23

##### *Business activities in third States*

1) If a domestic institution intends to take up or expand business activities outside the Contracting Parties to the EEA Agreement, it must demonstrate to the FMA that it is authorized to accept sponsoring undertakings in the host country in question.

2) If the interests set out in article 1 appear endangered, the FMA may prohibit business activities in the third State in question.

3) Article 21, paragraph 5 shall apply *mutatis mutandis*.

### **IV. Ongoing supervision of the business activities of institutions for occupational retirement provision**

#### Article 24

##### *Principle*

1) The FMA shall supervise the entire business activities of the institutions. The FMA shall require them to comply with appropriate internal control procedures.

2) The FMA shall ensure that legislation is complied with, that the solvency of the institutions is maintained, that the requisite provisions are established, and that the concerns of members and beneficiaries are sufficiently safeguarded.

## Article 25

*Supervision of own funds*

1) If an institution records a technical deficit, it shall notify the FMA immediately. The notification must be submitted at the latest once this deficit is recorded on the basis of the business report.

2) If the financial situation of an institution is in danger of deteriorating to the extent that the claims of the members and beneficiaries appear endangered, the FMA may, without prejudice to its other powers, restrict or prohibit the free disposal of the institution's assets. The same shall apply if an institution fails to establish sufficient technical provisions or has insufficient assets to cover the provisions, or otherwise fails to comply with the legislative and administrative requirements with respect to capital resources and capital investment. Orders concerning the free disposal of an institution's assets may also be issued in respect of third parties.

## Article 26

*Investment rules*

1) Institutions shall invest their assets in accordance with the prudent person rule and, in view of the risks and liabilities to be covered, pay particular attention to achieving the greatest possible security, quality, and profitability, while maintaining sufficient liquidity of the institution and ensuring appropriate asset allocation and diversification overall.

2) The institutions shall regularly transmit a statement of the principles of its investment policy to the FMA; this statement must be revised without delay after any significant change in the investment policy and reviewed at least every three years. Significant changes and every review of the investment policy must be notified to the FMA without delay.

3) Further details shall be provided by ordinance.

## Article 27

*Special legal transactions*

Institutions shall be prohibited from borrowing or acting as a guarantor on behalf of third parties. The FMA may, upon application, authorize an institution to carry out some borrowing only for liquidity purposes and on a temporary basis.

## Article 28

*Asset management*

1) Institutions shall, for the management of their investments, be allowed to appoint an asset manager established in another Contracting Party to the EEA Agreement and duly authorized for this activity. If a demonstrated interest exists, the FMA may also approve asset managers outside the Contracting Parties to the EEA Agreement.

2) In individual cases, the FMA may require separate management of the assets.

## Article 29

*Accounting and reporting*

1) Domestic institutions must compile their business report (annual account statement, consisting of balance sheet, income statement, and notes, plus annual report) as of 31 December. They must submit this business report together with a report on the past business year, taking into account all operated pension schemes, to the FMA each year by 30 April. The business report and the report to the FMA must comply with the rules and guidelines issued by the Government and the FMA.

2) In addition to the business report and the report to the FMA referred to in paragraph 1, the FMA may order reporting for periods of less than a year. Paragraph 1, sentence 3 shall apply *mutatis mutandis*.

## Article 30

*External audit requirement*

1) Each year, the institutions must have their business activities audited by an independent external audit office recognized by the FMA. They shall provide all information to the audit office and present all records necessary for a proper audit.

2) In particular, the institutions shall:

- a) keep all records available that are necessary for determining and assessing assets and liabilities;
- b) grant access to their account books, receipts, business correspondence, and minutes of the administration;
- c) present the reports of their internal audit department.

3) By ordinance, the Government shall set out detailed provisions concerning the recognition of audit offices.

#### Article 31

##### *Responsibilities of the audit offices*

- 1) The audit offices shall review whether:
  - a) the business activities of the institution comply with the legislative requirements and the articles of association;
  - b) the conditions for granting the license, including the technical requirements, are met on a permanent basis;
  - c) the annual account statement and the annual report to the FMA comply with the legislative requirements.
- 2) The audit offices are required to immediately notify the FMA of all facts and decisions of which they learn in the fulfillment of their responsibilities and which:
  - a) might constitute a violation of legal or administrative requirements governing the taking-up and pursuit of the institutions' activities;
  - b) might interfere with continuation of the business activities of an institution; or
  - c) might entail denial of certification of proper accounting or reservations in this regard.
- 3) Anyone submitting a notification under paragraph 2 in good faith shall be released from associated liability.
- 4) The Government shall provide further details by ordinance.

#### Article 32

##### *Information requirement and audit powers*

- 1) The institutions must provide all necessary information to the FMA and allow inspection of account books and business records. The FMA may also perform inspections on site.
- 2) At any time, the FMA may review the business management and the financial situation of an institution with respect to whether the business reports and the reports to the FMA correspond to the facts and whether

the own funds and provisions reach the prescribed amount and are invested and managed in accordance with the requirements.

3) Third parties shall be required to provide information to the FMA, to the extent necessary for the supervisory activities of the authority.

4) To the extent necessary for supervision, the FMA may mandate third parties to conduct audits at the expense of the institution.

#### Article 33

##### *Information requirements in respect of members, beneficiaries, and sponsoring undertakings*

The institutions shall regularly inform members, beneficiaries, and sponsoring undertakings on the provisions of the pension schemes, the benefits, and the course of business of the institution. The Government shall provide details by ordinance.

#### Article 34

##### *Obligation of secrecy*

1) The members of the organs of institutions, their employees, and other persons working on behalf of the institution shall be obliged to maintain secrecy of facts not publicly known that have been entrusted or made available to them pursuant to their business relationships with clients. The obligation to maintain secrecy shall not be limited in time.

2) If, in the course of their official activities, representatives of authorities learn of facts subject to the obligation of secrecy, they shall maintain the obligation of secrecy as official secrecy.

3) The obligation of secrecy shall be subject to the legal provisions concerning the duty to give information or evidence to judicial authorities.

4) Members or beneficiaries may grant exemptions to the obligation of secrecy.

## Article 35

*Changes subject to approval and notification*

- 1) Changes to the approved business plan under article 7, paragraph 1 shall be subject to prior approval by the FMA.
- 2) In cases under paragraph 1, entries in the Public Registry shall only be permissible after approval by the FMA.
- 3) Changes not subject to approval under paragraph 1 must be notified to the FMA, provided that a notification requirement is specified by law or ordinance.

## Article 36

*Measures*

- 1) The FMA may take measures in the fulfillment of its control and monitoring responsibilities.
- 2) In particular, the FMA may issue orders suitable and necessary to prevent or remedy grievances.
- 3) Unless the concerns of members and beneficiaries can be safeguarded in another way, the FMA may, at the expense of the institution, transfer in whole or in part powers to which the bodies of the institution are entitled by law or under the articles of association to a special mandatary suitable for safeguarding such powers.
- 4) In particular, the FMA may take measures against an institution if:
  - a) the institution fails to adequately protect the interests of the members and beneficiaries;
  - b) the institution no longer meets the conditions for business operations;
  - c) the institution significantly neglects its obligations under the applicable rules; or
  - d) when engaging in cross-border activities, the institution fails to comply with the labor and social laws of the host Member State applicable to occupational retirement provision.



## Article 37

*Supervision taxes and fees*

Supervision taxes and fees shall be levied in accordance with the financial market supervision legislation.

## Article 38

*Data processing*

1) The FMA may process or arrange for the processing of all data necessary to fulfill its responsibilities under this Act, including personal profiles and particularly sensitive data concerning administrative or criminal prosecutions and penalties imposed on persons responsible for the administration and general management of an institution, in particular for purposes of:

- a) maintaining the register provided for in article 17;
- b) exercising supervision over execution of this Act;
- c) keeping statistics.

2) The FMA shall take all technical and organizational measures necessary to protect the data gathered from abuse.

3) After termination, dissolution, and deregistration of the institution, the processed personal data shall be dealt with in accordance with the provisions of the Data Protection Act.

**V. Termination of business activities**

## Article 39

*Principle*

1) Supervision shall extend to the liquidation of an institution and the processing of existing pension schemes, if the business activities of the institution are prohibited or voluntarily discontinued or if the license for business operations is withdrawn.

2) Supervision shall likewise extend to the partial liquidation of an institution or its pension schemes. The Government may provide further details by ordinance.

## Article 40

*Withdrawal of license*

1) The FMA may withdraw a license for business activities in whole or in part if:

- a) an institution no longer meets the conditions for granting the license;
- b) the institution gravely violates obligations arising from supervisory regulations or official orders;
- c) such serious grievances arise that a continuation of business operations would endanger the interests of the members or beneficiaries;
- d) the institution does not make use of its license for business operations within twelve months or expressly renounces the license, or if it has suspended business operations for more than six months; or
- e) bankruptcy proceedings are initiated with respect to the assets of the institution.

2) If the license is withdrawn, the FMA shall take all measures likely to safeguard the concerns of the members and beneficiaries. In particular, it may restrict or prohibit the free disposal of the institution's assets or transfer asset management to suitable persons. The FMA shall also inform the competent authorities of the other Contracting Parties to the EEA Agreement.

3) If the FMA gains knowledge of facts that would justify withdrawal of a license, it may instead demand the dismissal of members of the board of directors or foundation council or of the general management to whom the facts personally relate, and it may also prohibit such persons from engaging in their business activities.

## Article 41

*Measures against institutions authorized in another Contracting Party to the EEA Agreement*

1) If it is determined that an institution from another Contracting Party to the EEA Agreement which is engaging in cross-border activities in Liechtenstein is not in compliance with domestic legal provisions, then the FMA shall immediately inform the competent authorities of the home Member State and request them to take action against the institution.

2) If violations of domestic legal provisions continue, the FMA may, upon notification of the competent authority of the home Member State, prohibit the institution from further business activities in Liechtenstein and may take all necessary measures.

#### Article 42

##### *Renunciation of license*

1) If an institution renounces its license, the FMA shall release it from supervision, as soon as all obligations arising from supervision law have been fulfilled.

2) If an institution renouncing its license no longer fulfills the legal requirements, the FMA may demand that the institution restore a lawful state of affairs despite the renunciation.

#### Article 43

##### *Publication*

If the license of an institution is withdrawn, if the institution renounces its license, or if it fails to restore a lawful state of affairs in the event of a renunciation, then the persons affected shall be informed thereof by means of publication at the expense of the institution.

#### Article 44

##### *Notification requirement of foreign institutions*

Institutions whose registered office or main administration is situated abroad operating in Liechtenstein must notify the FMA immediately if their license to engage in business operations has been withdrawn in another State.

## VI. Special provisions governing bankruptcy

### Article 45

#### *Satisfaction of claims of members and beneficiaries*

1) The assets covering technical provisions and the assets allocated to the managed pension schemes shall constitute a separate bankruptcy estate in accordance with article 45 of the Bankruptcy Code to satisfy the claims of the members and beneficiaries. The court shall order that the listing of assets dedicated to the separate estate be submitted immediately to the FMA. The FMA shall determine the separate estate for the time that bankruptcy proceedings are initiated. Reflows and income from the assets dedicated to the separate estate and contributions to the pension schemes included in the separate estate that are received after bankruptcy proceedings have been initiated shall fall into this separate estate.

2) The list submitted pursuant to paragraph 1 may no longer be changed once bankruptcy proceedings have been initiated. The estate trustee may make technical corrections to the listed asset values with the approval of the Court of Justice.

3) If the proceeds from the conversion of the assets are lower than their valuation in the list submitted pursuant to paragraph 1, then the estate trustee must communicate this to the Court of Justice and justify the deviation.

4) To the extent that claims from the separate estate are not fully satisfied, they shall belong to the first category of bankruptcy claims (article 48 of the Bankruptcy Code).

5) The claims of the members and beneficiaries to be found in the account books of the institution shall be deemed filed. The right of the creditor to file these claims as well shall not be affected. The filing of claims need not include an indication of ranking.

## VII. Authorities, procedures, and legal remedies

### Article 46

#### *Supervisory authority*

The Financial Market Authority (FMA) shall be responsible for the supervision of institutions for occupational retirement provision.

### Article 47

#### *Cooperation with other authorities*

1) The FMA shall cooperate with other domestic authorities to ensure the smooth functioning of the supervision of institutions.

2) Where necessary, the FMA may cooperate with the competent foreign authorities, in particular by processing data, information, reports, and records or transmitting these abroad itself. For purposes of cooperation, the FMA may also conclude agreements with foreign supervisory authorities.

3) The FMA may provide official information if:

- a) the public order and the secrecy interests protected by article 34 and other special legislation are not violated thereby;
- b) the information does not contravene the purpose of this Act;
- c) it is ensured that the requesting State would grant an equivalent Liechtenstein request;
- d) it is ensured that the received information is only used for the supervision of institutions and sponsoring undertakings;
- e) it is ensured that the staff members of the competent authorities and persons mandated by the competent authorities are subject to official secrecy.

4) The FMA may at any time obtain information on activities of Liechtenstein institutions and undertakings abroad and the economic circumstances of foreign institutions whose activities may have an effect on occupational retirement provision in Liechtenstein, if the purpose of this Act so requires.

5) If the supervisory authority responsible for a foreign institution has restricted or prohibited the free disposal of the institution's assets, then the FMA may, upon application of the foreign authority, take the

same measures vis-à-vis the institution with respect to all its activities in Liechtenstein; article 25, paragraph 2, sentence 3 shall apply *mutatis mutandis*.

Article 48

*Decisions and decrees*

1) If violations of provisions of this Act or of the ordinances enacted in conjunction with this Act are found, the supervisory authority shall issue the appropriate decisions and decrees.

2) To the extent not otherwise provided by this Act, the National Administration Act shall apply.

Article 49

*Legal remedies*

1) Decisions and decrees of the FMA may be appealed to the FMA Complaints Commission within 14 days of service.

2) Decisions and decrees of the FMA Complaints Commission may be appealed to the Administrative Court within 14 days of service.

Article 50

*Notification requirement of the authorities*

The Office of the Public Prosecutor shall notify the FMA of the initiation or suspension of criminal proceedings concerning members of the administration or general management of institutions for occupational retirement provision and audit offices and connected with their professional activities relating to retirement provisions under this Act; the courts shall transmit copies of final judgments.

## VIII. Penal provisions

### Article 51

#### *Misdemeanors and administrative offenses*

1) The Court of Justice shall punish with imprisonment of up to one year or with a monetary penalty of up to 360 daily rates for committing a misdemeanor anyone who:

- a) performs an activity subject to this Act without a license; or
- b) violates the obligation of secrecy or induces such a violation or attempts to induce it.

2) The Court of Justice shall punish with imprisonment of up to six months or with a monetary penalty of up to 180 daily rates for committing a misdemeanor anyone who:

- a) violates conditions imposed in connection with a license;
- b) violates the provisions concerning capital resources;
- c) gives false information to the FMA or the audit office, in particular for purposes of obtaining a license for business operations, authorization for cross-border activities, or approval of a change to the business plan;
- d) does not keep account books properly or does not retain account books and receipts;
- e) makes untrue statements in the periodic reports or notifications or withholds significant facts;
- f) as an auditor, grossly violates his responsibilities, in particular by making untrue statements in the audit report or withholding significant facts, by failing to make required requests to the institution, or by failing to submit required reports and notifications;
- g) grossly violates responsibilities as a responsible actuary or as a special mandatary;
- h) grossly violates responsibilities as a depositary or asset manager; or
- i) as an institution for occupational retirement provision, performs transactions that are not immediately connected to the retirement provision business.

3) The FMA shall punish with a fine of up to 100,000 francs for committing an administrative offense anyone who:

- a) fails to compile the business report as required;
- b) fails to have the regular audit or an audit or inspection required by the FMA conducted properly;
- c) fails to fulfill his responsibilities vis-à-vis the audit office;
- d) violates the information requirements with respect to the business report, the report to the FMA, or other reporting obligations under article 25, paragraph 1, article 26, paragraph 2, or articles 29, 32, or 33;
- e) fails to submit the required reports and notifications to the FMA, submits them too late, or fails to fulfill the submission requirements; or
- f) fails to comply with a demand to bring about a lawful state of affairs or with any other decree by the FMA.

4) If the offenses are committed negligently, the maximum penalties shall be reduced by half.

5) The general part of the Criminal Code shall apply *mutatis mutandis*.

#### Article 52

##### *Responsibility*

If violations are committed in the business operations of a legal person, then the penal provisions shall apply to the persons that acted or should have acted on its behalf, but with joint and several liability of the legal person for monetary penalties and fines.

## **IX. Transitional and final provisions**

#### Article 53

##### *Transitional provisions*

1) Licenses for operating an institution for occupational retirement provision that do not meet the requirements of this Act and the ordinances enacted in conjunction with this Act shall be adjusted to the



new legal provisions within one year of enactment thereof or, if necessary, be withdrawn.

2) The other obligations under this Act shall not be affected thereby.

Article 54

*Implementing ordinances*

The Government shall enact the ordinances necessary to implement this Act.

Article 55

*Entry into force*

This Act shall enter into force on the day of its publication.

On behalf of the Reigning Prince:

signed *Alois*

Hereditary Prince

signed *Otmar Hasler*

Prime Minister