

FMA-Guidance 2018/19 – Licence as a bank

Guidance regarding the procedure for granting of a licence to operate as a bank in accordance with the Liechtenstein Law of 5 December 2024 on the Activities and Supervision of banks, financial holding companies and mixed financial holding companies (*Gesetz vom 5. Dezember 2024 über die Tätigkeit und Beaufsichtigung von Banken, Finanzholdinggesellschaften und gemischten Finanzholdinggesellschaften; Bankengesetz, BankG* – Banking Act; hereinafter referred to as the «BA») and the Liechtenstein Ordinance of 14 January 2025 on the Activities and Supervision of banks, financial holding companies and mixed financial holding companies (*Verordnung vom 14. Januar 2025 über die Tätigkeit und Beaufsichtigung von Banken, Finanzholdinggesellschaften und gemischten Finanzholdinggesellschaften; Bankenverordnung, BankV* – Banking Ordinance; hereinafter referred to as the «BO»).

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Annexes:	<ul style="list-style-type: none">• Annex 1: Legal basis• Annex 2: <u>Application form</u>

1. General information

Companies headquartered in Liechtenstein, as well as those intending to conduct banking business in Liechtenstein on a professional basis pursuant to Article 6(1) BA must hold a licence issued by the FMA prior to commencing their business activities (Article 16(1) BA).

The licence to operate a bank will only be granted if all the conditions set out in Articles 18 to 23 BA are met.

1.1 Legal form

Banks may only be established in the legal form of a company limited by shares (*Aktiengesellschaft*; AG) or a European Company (SE) (Article 19(1) BA). The application for a banking licence cannot be submitted before the establishment of the company, as the applicant lacks legal personality.

1.2 Third-country group

If the bank is part of a third-country group, the licence will only be granted (in addition to the requirements set out in Articles 18 to 23 BA) if the group is subject to consolidated supervision comparable to that in Liechtenstein and if the supervisory authority of the parent company based in the third-country or the authority overseeing the third-country bank raises no objections to the establishment of a subsidiary in Liechtenstein (Article 25(7) BA).

1.3 Company name

In accordance with Article 9(1) BA, company names and business purposes that suggest banking activities may only be used by entities that have been granted a banking licence. Furthermore, a bank's company name must not be misleading, particularly in a way that creates false assumptions regarding its scope of activities.

Banks headquartered abroad are permitted to use their company name in Liechtenstein. However, if there is a risk of confusion, an explanatory name affix may be required. When using the name of the parent company, the provisions of Articles 20(2) BA must be observed.

The FMA verifies that the company name is admissible from a supervisory perspective.

1.4 Head office

The registered office and the head office of a bank must be situated in Liechtenstein (Article 18(2) BA). For the sake of completeness, it should be noted that the operation of a shell bank is prohibited. Shell banks are defined as banks that have no physical presence in Liechtenstein and are not part of a financial sector group that is subject to the requirements of Directive (EU) 2015/849 or an equivalent regulation on a consolidated basis and that is not subject to equivalent supervision by a competent authority with respect to these requirements (Article 10 BA).

The minimum substance requirements set by the FMA depend on the specific business model, such as whether operations are conducted entirely digitally, the target market, and the customer base. However, from the FMA's perspective, the following minimum standard must always be met, regardless of the specific business model:

- The majority of the members of the Executive Board must reside within commuting distance;

- At least one member of the Board of Directors must have a connection to Liechtenstein and reside within commuting distance;
- Persons responsible for compliance and risk management must have knowledge of Liechtenstein Law (in particular, the Due Diligence Act (DDA) and the Banking Act (BA)) and must generally operate in Liechtenstein.

1.5 Initial and minimum capital

The minimum capital requirement for banks is CHF 10 million or the equivalent amount in euros or US dollars. In justified cases, the FMA may prescribe a different initial capital requirement depending on the nature and scope of the business activities. By the time business operations commence, the initial capital must be fully paid in and must be available to the bank without any restrictions or encumbrances (Article 18 BA).

In accordance with Article 93 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 646/2012 (Capital Requirements Regulation; hereinafter referred to as the “CRR”) and Article 18(4) BA, the own funds of an institution may not fall below the amount of the initial capital required at the time of its authorization. The business plan must demonstrate that the required initial capital at the time of authorization is not fallen below, taking into account initial expenses (Article 18(4) BA).

2. Qualifying holdings

Shareholders with direct or indirect qualifying holdings within the meaning of Article 3(1)(31) BA in conjunction with Article 4 (1)(36) CRR must satisfy the applicable suitability requirements in view of the requirement to ensure sound and prudent management of the bank (Article 22(1) BA). The requirements set out in Article 60(1) BA must be met. Shareholders who acquire a qualifying holding in a bank after authorization has been granted will be assessed by the FMA as part of the approval process. In this regard, reference is made to the [FMA Guidelines 2017/20](#) and [FMA Communication 2013/7](#).

3. Guarantee in respect of the proper conduct of business

3.1 Assessment of guarantees

Banks must ensure that the members of the Board of Directors, the Executive Board, the Head of Internal Audit, as well as other holders of key functions, always demonstrate the professional and personal qualifications necessary to guarantee the integrity of business operations (Article 21(3) in conjunction with Article 63 BA).

For the assessment of guarantees in respect of the proper conduct of business, reference is made to [FMA Communication 2013/7](#). For the assessment of guarantees in respect of the proper conduct of business by the FMA, the corresponding application form available in the e-service portal must be used.

When assessing the requirements, the FMA takes into account, among other things, the factual and geographical scope of business and the organisational structure of the bank. The intended persons must also be in a position to duly perform their tasks within the bank, taking into account their other duties and place of residence.

3.2 Mandate ceilings, incompatibility and close relationships

The members of the Board of Directors and the Executive Board must always meet the requirements set out in Article 63 BA. They must not be members of the FMA, the FMA Complaints Commission or its governing bodies.

When appointing members to the Board of Directors and the Executive Board, the mandate limits for governing bodies, as set out in Article 63(5) BA, must also be observed.

4. Organisational structure

4.1 General organisational structure requirements

Banks must be organised appropriately according to their field of business and require (see, among others, Article 21 and 65(1) BA):

- a Board of Directors comprising of least three members for the overall management, supervision and control of the bank (see Article 21 BA);
- an Executive Board responsible for operations, consisting of at least two members (with at least two full time equivalents) who exercise their duties in joint responsibility and must not concurrently serve on the Board of Directors (Article 21 BA);
- an Internal Audit directly reporting to the Board of Directors pursuant to Article 75 BA;
- a compliance function pursuant to Article 74 BA;
- a Risk Management function that works independently of the operating business pursuant to Article 73; and
- suitable procedures via which employees can report breaches against the BA and the CRR internally via a dedicated, independent, and autonomous channel.

Banks must also continuously comply with the general organisational requirements specified in Article 10 BO.

4.2 Board of Directors and Executive Board

The division of duties between the Board of Directors and the Executive Board must ensure a proper monitoring of the Executive Board (Article 21(2) BankG). When selecting the members of the Board of Directors and the Executive Board, the topic of diversity must be borne in mind (Article 63(9) BA).

When selecting members of the Board of Directors, care must be taken to ensure that a sufficient minimum number of independent Board members is always maintained (Article 63(10) BA).

The Board of Directors is responsible for the overall management, supervision and control of the bank. In particular, the Board of Directors' non-transferable duties under Article 66 BA comprise:

- The definition of the organisational structure and the adaption of regulations for corporate governance and control, as well as for the management of the risk strategy, including their regular review and adjustment. The Board of Directors is accountable to the FMA regarding the establishment and monitoring of the implementation of these regulations and must provide the corresponding evidence upon request;

- The determination of accounting, financial control and financial planning principles, if this is necessitated by the nature and scale of operations;
- The appointment and dismissal of the Executive Board;
- The supervision of the Executive Board, including with respect to compliance with legal provisions, the articles of association and regulations as well as the business development of the company;
- The preparation of the annual report and the approval of the interim financial statements, as well as the preparation of the general meeting and the execution of its resolutions;
- The issuance of a regulation for the activities of the internal audit function, as well as its regular evaluation;
- The regular approval and review of the risk policy.

If the Board of Directors consists of five or more members, it may delegate tasks that are not explicitly reserved for it by law to a committee formed from among its members, provided that the committee has at least three members.

4.3 Articles of association and regulations

Articles of association

In accordance with Article 23(1) BA, the provisions of Article 279 of the Liechtenstein Persons and Companies Act of 20 January 1926 (*Liechtensteinisches Personen- und Gesellschaftsrecht vom 20. Januar 1926, PGR*) apply to the content of the articles of association (legally required content of articles of association). In particular, they must include a clear description of the factual and geographical business areas in which the activities of the bank are regularly conducted. The articles of association require approval from the FMA to be valid (Article 23 BA).

Regulations

The rules of procedure define the organisational structure as well as the business principles and the financial management of the bank or investment firm (Article 23(3) BA). In particular, they include the duties and authorities of the Board of Directors, the Executive Board, the Compliance function and Internal Audit, as well as regulations on risk management pursuant to Article 79 BA and regulations on transactions involving members of the governing bodies and employees.

4.4 Outsourcing of functions and activities

Outsourcing of functions or activities is only permitted if the requirements set out in Article 76 BA in conjunction with Articles 14 et seqq. BO are met. Reference is made to the guidelines on outsourcing (EBA/GL/2019/02) of the European Banking Authority (EBA) as well as Regulation (EU) No. 2022/2554 (DORA) for outsourcing in the area of information and communication technology.

5. Informal preliminary application

Prior to submitting the application in accordance with Article 24(1) BA, a draft version of the definitive licence application (application for preliminary review) can be submitted to the FMA without the original documents.

The application for preliminary review must have the same fundamental structure, but its content should be limited to the points/aspects mentioned below. Each point should be described and reference should be made to the corresponding annexes, which should be numbered consecutively. It should be noted that the FMA will only assess key sub-aspects regarding their eligibility for authorisation, focusing on red flags. These include the following areas:

- Business plan (in accordance with the requirements of Article 5 of Delegated Regulation 2022/2580 and Article 18(4) BA)

To be submitted: a draft of the business plan along with a description of the business model. The business plan must include the following points in appropriate detail:

- Description of the business model and its associated unique selling point (USP, along with a detailed description of the planned activities;
- Legal classification of the planned and to-be-authorised activities, with a focus on Liechtenstein law (e.g., deposit business according to Article 6(1)(a) BA).

- Planned organisational structure with an approximate FTE indication in the regulatory-relevant areas, as well as an overview of the use of third-party providers (outsourcing).

- Budget and projected financial figures

To be submitted: A presentation of the budget or projected figures for the first three years after the commencement of business activities, including:

- Projected balance sheet, including projected income statement (according to Liechtenstein accounting standards), with three scenarios (Base Case, Best Case, Worst Case).
- A representation of compliance with regulatory capital adequacy and liquidity ratios. All assumptions must be thoroughly and plausibly justified.

- Complete group structure with details of relationships (share capital and voting rights)

To be submitted: a group organisational chart (all group companies including ultimate beneficial owners).

- Qualifying holdings (taking account of the entire group) and qualifying beneficial owners (direct/indirect (attributable))

To be submitted: passport copy and company register excerpts at all levels of the group organisational chart. It should be noted that corresponding documents must also be provided regarding the governing bodies of qualifying involved companies.

- Origin of funds

To be submitted: a description of the origin of funds to be used for establishment of the company as well as for raising the necessary initial capital (legally required or FMA-determined initial capital along with investments), along with evidence for each source of funds (e.g., tax certificates for the last three years for individuals or audited financial statements for the last three years for legal entities).

Please note that the FMA's preliminary review does not constitute a definitive and conclusive review, especially as only the aforementioned framework information is incorporated here.

6. Licence application and licensing procedure

6.1 Licence application

Anyone intending to operate as a bank must submit a written application to the FMA. In the licence application as a bank, compliance with the authorisation requirements according to Articles 18 to 23 BA must be sufficiently demonstrated (Article 24 BA). The licence application consists of the checklist (Annex 2), an additional optional application document and annexes and should be clearly and systematically structured. All annexes must be numbered consecutively and referenced in both the checklist and the optional application document. Additionally, all annexes must be listed in a separate annex list. It is important to ensure that each annex and the corresponding relevant text passage are clearly marked, allowing for unambiguous allocation. Duplication of the same documents should be avoided, and when supplementary documents are submitted, the existing numbering must be consistently continued.

The licence application must generally be submitted in German. If required attachments are only available in their original form in English, they may be submitted without translation. Attachments in other languages must be submitted with an official certified translation.

The applicant must submit the original application for approval including the numbered annexes. For a digital submission, the checklist and any application document must be signed electronically by the applicant in a qualified manner. If original annexes exist, these must be submitted in the original. Annexes with a qualified electronic signature or with a digital official signature must be submitted digitally, while annexes with a handwritten signature or documents with an official stamp etc. must be submitted physically by post or messenger. Alternatively, the checklist and any application document can be signed by hand and submitted by post or courier to the FMA, Banking Division, Landstrasse 109, P.O. Box 279, LI-9490 Vaduz.

Regardless of the chosen method of submission, the documents for the assessment of the proof of the guarantee in respect of the proper conduct of business must be submitted digitally using the application form “BankG/EGG/ZDG: Beurteilung der Gewähr für einwandfreie Geschäftstätigkeit” provided on the e-Service Portal. Further information on the e-Service Portal and on creating a user account can be found at: <https://www.fma-li.li/de/e-service.html>.

6.2 Licencing procedure

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 (Article 24(1) BA).

All information provided by applicants will be treated as confidential and subject to professional confidentiality in accordance with Article 142 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. The FMA decides on an application to grant a licence within six months of receipt of the complete application. If the applicant does not submit all required information and documents within twelve months of the application's receipt, the FMA will reject the application.

The application is considered complete when all required information (see section 6.3) has been submitted to the FMA. If the information provided in the application is reviewed and deemed incomplete by the FMA, the FMA will issue a request for additional information, giving the applicant the opportunity to submit the requested details. Once the application is complete, the FMA will notify the applicant in writing, stating the date of receipt of the complete application or the date on which the missing information was received to complete the application (Article 2 of Delegated Regulation 2022/2581).

The bank must commence its business activities within one year of the authorisation becoming legally effective, otherwise the FMA will revoke the licence (see Article 33(1)(a) BA).

6.3 Application documents for the granting of a licence as a bank

The documents that must be submitted with the licence application are specified in the Delegated Regulation 2022/2580 and Article 6 BO and can be found in the checklist (see Annex 2). All annexes/documents must be numbered consecutively and submitted in an orderly manner. If a reference to an annex is made in the checklist, the annex and the relevant text passage must be clearly marked to ensure unambiguous allocation. Duplicate submissions of individual documents should be avoided. When submitting additional documents, the existing numbering must be consistently continued.

If annexes exist in their original form, they must be submitted in the original. Documents with a qualified electronic signature or with a digital official signature must be submitted digitally, while annexes with a handwritten signature or documents with an official stamp etc. must be submitted physically by post or messenger.

In addition, a detailed opinion from an audit firm recognized under the Banking Act must be submitted with the application. This opinion must assess compliance with the licence requirements, particularly regarding the proposed organisation (including IT), corporate governance, internal control system, risk management (for EMA/PSA: the safeguarding of client funds) as well as the statutes and regulations (if applicable, in draft form) and the business plan. This detailed opinion must not be prepared by the audit firm that will be mandated for future audits.

7. Charges Licensing fee

The fee for the granting or refusal of the licence for a bank amounts to CHF 100'000 (for already licenced investment firms that are required to obtain a banking licence, the fee is CHF 50'000).

8. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data 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



9. Final Provisions

9.1 Entry into force

This Guidance enters into force on 1 January 2015.

Annex 1 – Legal basis

- Liechtenstein Law of 5 December on the activities and supervision of banks, financial holding companies and mixed financial holding companies (*Gesetz vom 5. Dezember 2024 über die Tätigkeit und Beaufsichtigung von Banken, Finanzholdinggesellschaften und gemischten Finanzholdinggesellschaften*; *Bankengesetz, BankG* - Banking Act; BA);
- Liechtenstein Ordinance of 14 January 2025 on the activities and supervision of banks, financial holding companies and mixed financial holding companies (*Verordnung vom 14. Januar 2025 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*);
- Liechtenstein Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung, SPG* – Due Diligence Act, DDA);
- Liechtenstein Ordinance of 17 February 2009 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Verordnung vom 17. Februar 2009 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung, SPV* – Due Diligence Ordinance, DDO);
- Commission Delegated Regulation (EU) 2022/2580 of 17 June 2022 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided in the application for the authorisation as a credit institution, and specifying the obstacles which may prevent the effective exercise of supervisory functions of competent authorities;
- 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*).