

FMA-Guidance 2022/5 – Licensing of a financial holding company or mixed financial holding company

Procedure of granting a licence as a financial holding company or mixed financial holding company 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; 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 Banken und Wertpapierfirmen; Bankenverordnung, BankV* – Banking Ordinance; BO)

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Annexes:	<ul style="list-style-type: none">• Annex 1: legal basis• Annex 2: <u>(mixed) financial holding licence checklist</u>

1. General Information

With the implementation of CRD V, nationally implemented in Article 26 of the Banking Act (BA), a licensing requirement was introduced 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 167 (1) BA) and must ensure compliance with these requirements on a full or sub-consolidated basis within a banking group.

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 26 BA if it also has competence pursuant to Article 161 BA over supervision on a consolidated basis (Article 26(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 26 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 is a parent financial holding company, 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 based in another EEA member state, and at least one of its subsidiaries is a bank that is supervised individually by the FMA (Article 161(1)(d) BA).

If at least two banks or EEA credit institutions or investment firms licensed in EEA Member States have 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 161(3) 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 or EEA credit institution 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 or EEA credit institution 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 161(4) BA).

If the FMA has competence over the supervision of multiple banks 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 the total assets of the EEA credit institutions supervised by another competent authority on an individual basis (Article 161(5) 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 161(6) 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 161 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 161 BA 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 161(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 28(1) 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 pursuant to Article 26(1) or (2) BA;
 2. to resolve or avoid conflicts within the group; and
 3. to implement effectively the group-wide strategies and procedures established by the parent financial holding company or mixed parent financial holding company pursuant to Article 26(1) BA throughout the entire group;
- b) the organisational structure of the group to which the (mixed) financial holding company under Article 26(1) BA must 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. the intra-group positioning of the (mixed) financial holding company under Article 26(1) or (2) BA; and
 2. shareholder structure; and
 3. the intra-group role of the (mixed) financial holding company under Article 26(1) or (2) BA.
- c) the requirements laid down in Article 60(1) BA as well as Article 135 BA have been fulfilled.

4.1 Guarantee in respect of the proper conduct of business

According to Article 135(1) BA, (mixed) financial holding companies must ensure that members of the Executive Board have a good reputation and sufficient knowledge, skills and experience in order to perform their tasks. The requirements laid down in Article 22(1), Article 63(4) and (7) BA and the constraints on mandates established by the government according to Article 63 BA apply *mutatis mutandis*.

Members of the Executive Board are understood to be natural persons who, according to law or the company's statutes, perform executive functions in a bank, financial holding company, or a mixed financial holding company, are responsible for day-to-day operations, and are accountable to the Board of Directors (Article 3(1)(7) BA).

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 direct or indirect qualifying holdings 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 22(1) and (3) BA).

Reference is made to Article 60(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

The licence application consists of the checklist (Annex 2), an optional application document, and the attachments, and must be structured clearly and systematically. All attachments must be consecutively numbered and referenced in both the checklist and the optional application document. Additionally, all attachments must be listed in a separate attachment index. It is important to ensure that each attachment and the corresponding relevant text passage are clearly marked to allow for unambiguous assignment. The duplicate submission of the same documents should be avoided, and for any subsequent submissions, 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 enclosures 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>

The documents submitted will be comprehensively checked in formal and material terms.

5.2 Information that must be submitted

In the application as a financial holding company or mixed financial holding company, compliance with the licencing requirements under Article 28 BA must be sufficiently demonstrated (Article 27(1) BA).

The application as a (mixed) financial holding company pursuant to Article 27 BA must include the following details and information (Article 7 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) The personnel composition of the (mixed) financial holding company, including proof of the guarantee in respect of the proper conduct of business for the members of the Executive Board according to Article 135 BA;
- e) 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;
- f) Details concerning compliance with the criteria laid down in Article 22(1) with regard to shareholders and members, if the (mixed) financial holding company has a bank as a subsidiary;
- g) 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 60(1) BA; if the reliability of the criteria pursuant to Article 14 of Directive 2013/36/EU has already been assessed by another EEA supervisory authority, proof of the result of the assessment;
- h) Internal organisation and division of tasks within the group;
- i) 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;
- j) A declaration from an FMA-recognised firm of auditors that it accepts the mandate of external auditor pursuant to Article 130 BA;

- k) Any other details and information requested by the FMA that are necessary in order to carry out the review according to Article 28(1) BA;
- l) 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.

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 (Article 27(1) BA).

5.3 Licensing procedure

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

Following receipt of the application, the FMA will send the applicant a 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 142 BA.

A fee will be charged in respect of the licensing procedure, as indicated in section 8 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 four months of receipt of the complete application. If the applicant does not submit all required information and documents within six months of the application's receipt, the FMA will reject the application and may exercise its powers under Article 154(5) BA (Article 28(3) BA).

6. Exception from the licensing requirement

The licensing requirement for (mixed) financial holding companies according to Article 26(1) or (2) BA does not apply in situations in which not all of the prerequisites laid down in paragraph 3 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 26(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 26(3) 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 or financial institutions consist exclusively in the acquisition or holding or equity interests in subsidiaries;

- 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;
- 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.
- f) All information necessary to establish fulfilment of the prerequisites laid down in Article 26(3) BA must be filed by the (mixed) financial holding company along with the application for an exemption from the licensing requirement.

7. Ongoing compliance with licencing requirements

For the ongoing monitoring of the group structure and the verification of compliance with the requirements set out in Article 28(1) BA or, where applicable, Article 26(3) BA, financial holding companies or mixed financial holding companies must submit or report to the FMA, as the consolidated supervisory authority, at least the following information as of 31 December each year, no later than 31 March of the following year (Article 29(1) BA):

- a) a complete list of all companies within the group, including the classification of these companies in accordance with Regulation (EU) No. 575/2013;
- b) a complete list of all owners and beneficiaries of the financial holding company or mixed financial holding company.

If the FMA, as the consolidating supervisory authority, determines that the requirements for an exemption from the licencing requirement under Article 26(3) BA are not or are no longer met, it shall immediately inform the (mixed) financial holding company. In this case, the affected (mixed) financial holding company must apply for a licence under Article 26(1) or (2) BA within three months of receiving the notification from the FMA.

8. Licensing fee

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)(b) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz, FMAG – FMA Act*)).

9. Expiration Lapse and withdrawal of licence

The rules governing the expiration and withdrawal of a licence are set out in Article 35 and Article 36 BA.

10. 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

11. Final provisions

11.1 Entry into force

This Guidance enters into force on 3 October 2022.

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* - 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 Guidance 2017/20 - Prudential assessment of qualifying holdings (*FMA-Wegleitung 2017/20 - Aufsichtsrechtliche Beurteilung von qualifizierten Beteiligungen*);
- FMA Guidance 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 Guidance 2017/7 - Liquidity requirements under the CRR/CRD IV (*FMA-Wegleitung 2017/7 - Liquiditätsanforderungen gemäss CRR/CRD IV*);
- FMA Guidance 2017/6 - Preparation of Recovery Plans.