

## **FMA Instructions 2017/1 – Instructions on establishing an asset management company**

Instructions on establishing an asset management company in accordance with the Liechtenstein Law of 25 November 2005 on Asset Management (*Gesetz vom 25. November 2005 über die Vermögensverwaltung; VVG – Asset Management Act*, hereinafter referred to as the “AMA”) and the Ordinance of 20 December 2005 on the Asset Management Act (*Verordnung vom 20. Dezember 2005 zum Gesetz über die Vermögensverwaltung; VVO – Asset Management Ordinance*, hereinafter referred to as the “AMO”).

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These Instructions provide an overview of the procedure for obtaining a licence on establishing an asset management company in Liechtenstein. Asset management companies are entitled, within the applicable framework, to provide services in accordance with Directive 2004/39/EC (MiFID).

Decisions regarding individual cases will be made solely on the basis of legislative provisions and instructions issued by the Financial Market Authority Liechtenstein (hereinafter referred to as the “FMA”) in the capacity of supervisory authority. Please contact the FMA for further information.

### **1. General information**

Undertakings intending to provide or to arrange the supply of investment services to third parties on a professional basis, either in or from Liechtenstein, under Article 3(1) of the AMA must hold a licence issued by the FMA prior to commencing business (Article 5 of the AMA).

Asset management companies may provide the following services:

- a) portfolio management;
- b) investment advice;
- c) reception and transmission of orders in relation to one or more financial instruments;
- d) investment research and financial analysis, or other forms of general recommendation relating to transactions in financial instruments, for the purpose of assisting clients directly; and
- e) execution of orders on behalf of clients.

A licence to operate an asset management company will only be granted if all the conditions set out in Article 6 of the AMA are met (including legal form, registered office in Liechtenstein, guarantee in respect of the proper conduct of business, business plan, organisational structure, own funds and initial capital, and investor compensation scheme).

#### **1.1. Company name**

In accordance with Article 11(1) of the AMA, undertakings may only use words or expressions indicating asset management activities in the company name, in any descriptions of the purposes of the business and in business advertising if they have been granted a licence to operate as an asset management company. The FMA will verify that the company name is acceptable from a regulatory perspective.

## **1.2. Qualifying holdings**

Shareholders with qualifying holdings (10% or higher) must satisfy the applicable eligibility requirements in view of the requirement to ensure sound and prudent management of the asset management company (Article 8 of the AMO in conjunction with Appendix 8 of the Liechtenstein Banking Ordinance [*Bankenverordnung*]).

## **1.4. Head office**

The registered office and the head office of the asset management company must be situated in Liechtenstein (Article 6(1)(b) of the AMA).

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

The persons charged with the administration and management of the asset management company must meet the professional and personal requirements to ensure the proper conduct of business at all times (Article 6(1)(h) of the AMA). In accordance with Article 7(1)(c) of the AMA, any persons designated to manage the business must, in particular, be appropriately qualified for the intended position on the basis of their education and career history. They must also have a minimum of three years of relevant full-time experience.

The persons concerned must be able, in general, to discharge their responsibilities at the asset management company properly, having regard to their other obligations, the organisation of the company and their place of residence.

In assessing the relevant individuals, the FMA will refer to their curriculum vitae (CV), the latest criminal records excerpts and written statements pertaining to any pending criminal and administrative proceedings or confirming that they have not been adjudicated bankrupt and are not subject to debt enforcement proceedings (see Article 4(1) of the AMO). It should also be noted that the same person may not be a managing director at more than two asset management companies.

## **1.6. Business plan**

Asset management companies must submit a viable business plan (Article 6(1)(e) of the AMA). In particular, the business plan must include information on the organisational structure, marketing, market prospects, financial planning and financing of the business for the first three financial years. The business plan must also refer to the total number of staff employed, including the percentages of employment, the business premises and signatory arrangements (see Article 3 of the AMO).

## **1.7. Organisational structure**

Article 6(1)(c) of the AMA stipulates that asset management companies must have a suitable permanent establishment in Liechtenstein, both in terms of staffing and premises, and the organisational structure required for the performance of their functions. Further information is set out in FMA Communication 2013/08 regarding organisational requirements for asset management companies.

In accordance with Article 6(1)(d) of the AMA, a minimum of two trustworthy individuals with capacity to act must serve as the managing directors of the company. At least one of the managing directors must actually be working for the company in a managerial capacity and satisfy the conditions set out in Article 7 of the AMA.

In particular, managing directors must be able to demonstrate three years' relevant professional experience. In addition, they must, in general, be able to discharge their responsibilities at the asset

management company properly, having regard to their other obligations, the organisation of the company and their place of residence.

In certain exceptional circumstances, a single managing director may be responsible for managing the affairs of the company.

The company shall establish the following positions and functions, depending on the nature, volume and complexity of its operations and the type and range of services supplied (Article 10a(1) of the AMO):

- Compliance function;
- Risk Management function;
- Internal Audit function; and
- an authority responsible for dealing with client complaints.

In addition, appropriate procedures must be established for dealing with breaches of the AMA and market abuse legislation by employees.

### **1.8. Own funds and initial capital**

The initial capital must be fully paid up prior to commencing business operations. The initial capital must be no less than CHF 100,000, or the equivalent in euros or US dollars, or, for companies also involved in reinsurance of other insurance mediation, no less than CHF 150,000, or the equivalent in euros or US dollars. The business plan needs to indicate whether the minimum initial capital requirement, factoring in start-up costs, has been met. It is essential to ensure that, where the circumstances so warrant, the FMA may require professional indemnity insurance and a different level of initial capital commensurate with the nature and scale of operations (Article 8(2) and (6) of the AMA).

Capital may not fall below the minimum level required at any time following commencement of operations (Article 8(1) of the AMA).

## **2. Licensing procedure**

Obtaining a licence involves a two-stage process in which the FMA undertakes a thorough legal and financial assessment of the applicant's circumstances. Firstly, applicants are required to complete and submit a Part I form to the FMA. It is only necessary to enclose the relevant CVs, information on the ownership structure and a brief business plan (including organisation chart) at this stage.

The FMA will review the documents submitted and, once it has received all the requisite documents, will inform the applicant of its decision within three weeks. A face-to-face meeting with the FMA may be arranged at this stage. Once the FMA has arrived at a favourable assessment of Part I and informed the applicant accordingly, the applicant may submit an application for a licence and a Part II form, together with all supplementary and supporting documents. The Part I form previously submitted thereupon forms part of the full application.

It is important to comment on each issue with reference to any relevant documents appended. A separate list of any appended documents must be provided, arranged in numerical order. The documents submitted will be checked carefully to ensure that the formal 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 final licence application, including all the information and documents referred to in section 3 of these Instructions, by writing to the Liechtenstein Financial Market Authority (FMA), Securities and Markets Division, Legal Department, Landstrasse 109, P.O. Box 279, 9490 Vaduz, Liechtenstein.

If there are any changes in material facts during the licensing process, the relevant documents must be updated and submitted immediately.

All information provided by applicants will be treated as confidential and are subject to professional confidentiality rules. Companies will only be added to the register of all approved financial intermediaries once a licence has been granted.

A fee will be charged in respect of the licensing procedure, as indicated in section 4 of these Instructions.

The duration of the licensing process will depend primarily on the coherence, quality and completeness of the information and documents provided at the application stage. The FMA will inform applicants whether the conditions for approval have been met. If the application is incomplete, unclear or inconsistent, the FMA will issue a request for the necessary amendments to be made. If the applicant fails to make such amendments, the application will be refused. In all circumstances, a decision must be made within six months of receipt of the full set of application documents (Article 6(3) of the AMA).

### **3. Applying for and obtaining a licence**

Applications for licences must be submitted in German; the originals of all accompanying documents must be submitted in German or English. In duly substantiated cases, the FMA may permit exemptions.

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

#### **3.1. Supporting documents**

The documents to be provided by asset management companies in support of an application for a licence include, in particular:

- request in writing;
- forms for authorisation – Part I and Part II;
- business plan;
- articles of association or deed of partnership;
- statement confirming that the company does not hold any other licence under specific legislation;
- declaration of acceptance by a recognised firm of auditors;
- document evidencing funds deposited or bank guarantee;
- calculation of the available and required equity capital;
- confirmation from the Commercial Registry that the company is registrable;
- documents evidencing that the proper conduct of business is ensured by reason of the persons charged with the administration and management of the company:
  - original copies of CVs which must be signed and dated
  - copies of degree certificates, educational certificates, evidence of employment and employer's references demonstrating professional competence and qualifications
  - criminal records excerpts (original documents less than three months old)
  - statements pertaining to any pending criminal and administrative proceedings that would affect the performance of duties and an undertaking to notify any relevant changes; these statements must be signed and the originals submitted
  - personal statement as to whether bankruptcy or composition proceedings have been instituted or concluded without the possibility of appeal;

- evidence demonstrating the sound and prudent management of the company and the continued viability of the business;
- diagram showing the ownership structure down to the last owner;
- evidence of membership of deposit insurance and investor protection schemes;
- information on the company's organisational structure:
  - guidelines on conflicts of interest
  - best-execution guidelines
  - rules on employee transactions
  - compliance guidelines
  - risk management guidelines including risk map (RiskMap)
  - description of measures in place to prevent money laundering and terrorist financing
  - description of applicable fees and charges or commission schemes

It should be noted that the FMA may request additional documents where required.

#### **4. Charges**

##### **4.1. Licensing fee**

A fee of CHF 10,000 is payable for the grant of a licence (Article 30 in conjunction with Appendix 1(B) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtgesetz; FMAG – FMA Act*)).

##### **4.2. Taxes**

General information on the taxation of asset management companies may be obtained from the Liechtenstein Tax Administration ([www.stv.llv.li](http://www.stv.llv.li)).

##### **4.3. 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*).

#### **5. Notification**

Liechtenstein asset management companies are permitted to operate under the right of freedom to provide services within the EEA. By way of notification, asset management companies are required to submit a request to the FMA for this purpose. Liechtenstein asset management companies intending to operate abroad may use the notification document available on the FMA website.

#### **6. Expiration, withdrawal and revocation of licences**

The rules governing the expiration, withdrawal and revocation of licences are set out in Articles 29 to 31 of the AMA. In accordance with Article 29 of the AMA, the FMA may, in particular, revoke licences where the holder obtained the license by providing false information or material circumstances were not disclosed to the FMA.

#### **7. Key legislation and legal rules**

- Liechtenstein Law of 25 November 2005 on Asset Management (*Gesetz vom 25. November 2005 über die Vermögensverwaltung; VVG – Asset Management Act; AMA*)

- Liechtenstein Ordinance of 20 December 2005 on the Asset Management Act (*Verordnung vom 20. Dezember 2005 über die Vermögensverwaltung; VVO – Asset Management Ordinance; AMO*)
- 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*)
- FMA Communication 2013/8 regarding organisational requirements for asset management companies