

To whom it may concern

Executive Office/  
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## **Implementation of the 4th EU Anti Money Laundering Directive**

Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (4th AMLD) was adopted by the European Parliament and the Council in June 2015.

One of the main objectives of the 4th AMLD is to align EU AML/CFT legislation with the international standards on combating money laundering and the financing of terrorism and proliferation that the Financial Action Task Force (FATF), an international anti-money laundering standard setter, adopted in 2012.

The preventive measures set out in the 4th AMLD (except for the requirement to establish beneficial ownership registers) have been implemented into Liechtenstein law. The relevant provisions can be found in the Law on Professional Due Diligence to Combat Money Laundering, Organised Crime and Terrorist Financing (Due Diligence Act; DDA) and the associated Due Diligence Ordinance (DDO).<sup>1</sup> The revised rules came into effect on 1 September 2017.

## **Implementation of recommendations made following the joint IMF/MONEYVAL assessment in 2014**

Liechtenstein also took the opportunity of the implementation of the 4th AMLD into national law to address at the same time the recommendations made following the most recent assessment of Liechtenstein's compliance with the FATF Recommendations conducted by the IMF and MONEYVAL in 2013/14 (Report on Fourth Assessment Visit, MONEYVAL(2014) 2).

### **Extension of the scope**

The scope of the DDA has been extended and aligned with the scope defined by the 4th AMLD. According to the revised law, asset management companies are now required to apply the preventive measures set out in the DDA in all instances (previous exemptions have been abolished). Furthermore, undertakings for collective investment that market their unit certificates or units are now fully subject to the DDA obligations (in the past, only fund management companies had been regarded as obliged firms).

Furthermore, the threshold above which high value dealers that make or receive cash payments need to apply customer due diligence (CDD) requirements was reduced to CHF 10,000.

Anticipating the requirements set out in the 5th AMLD, virtual currency exchanges have also been brought within the DDA's scope.

### **Risk-based approach to CDD**

One of the most important elements of the 4th AMLD is the strengthening of the risk-based approach to CDD. Already under the previous provisions of the DDA, entities subject to due diligence were required to take appropriate steps to identify and assess the risks of money laundering and terrorist financing, taking into account risk factors including those relating to their customers, countries or geographic areas, products, services, transactions, or delivery channels. Furthermore, obliged entities were also required to have in place policies, controls, and procedures to mitigate and manage these risks.

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<sup>1</sup> English translations are available at <http://www.regierung.li/law#finservices>

However, the risk factors that need to be taken into account have been further specified in the 4th AMLD. Accordingly, the Annex to the DDA contains a comprehensive set of risk factors that need to be considered when assessing the risks related to individual business relationships. This will entail a more consistent understanding of ML/TF risks.

The regulator's expectations in this area have been elaborated in great detail in FMA Guideline 2013/1 on the risk-based approach to CDD.

Furthermore, the revised DDA requires expressly that the firms' risk assessments must be documented, kept up-to-date, and made available to the relevant competent authorities upon request.

The 4th AMLD also introduced a new approach to simplified due diligence. The 3rd AMLD included a list of predefined low-risk situations where obliged firms were allowed to apply simplified due diligence (e.g. domestic public authorities, financial institutions subject to equivalent regulation, etc.). Pursuant to the 4th AMLD and the corresponding DDA provisions, obliged firms are no longer allowed to automatically apply simplified due diligence.

Obliged firms are now required to carry out a holistic evaluation of all relevant risk factors mentioned in the Annex to the DDA when determining whether an individual business relationship must be considered as higher, regular or lower risk.

The goal is to prevent automatism when conducting risk analysis. This approach, however, is overridden in the following situations: Politically exposed persons (PEPs), international correspondent relationships, and customers from specific high-risk countries will automatically be categorised as high-risk situations.

### **National risk assessment**

The 4th AMLD obliges each Member State to take appropriate steps to identify, assess, understand, and mitigate the risks of money laundering and terrorist financing affecting it (national risk assessment). These national risk assessments also need to take into consideration the findings of the supranational assessment of the risks of ML and TF affecting the internal market and relating to cross-border activities conducted at the level of the European Union.

### **Revised beneficial ownership definition**

The 4th AMLD introduces a new definition of beneficial ownership with respect to legal persons and arrangements. Pursuant to the revised definition implemented in Article 3(1) DDO, the following persons are deemed to be beneficial owners in corporate bodies, including establishments with a corporate structure or trust enterprises, and companies without legal personality:

1. natural persons, who ultimately directly or indirectly:
  - aa) hold or control a share or voting right amounting to 25% or more in such legal entities;
  - bb) have a share of 25% or more in the profits of such legal entities; or
  - cc) exercise control over the management of such legal entities in another way;
2. natural persons, who are members of the executive body if – after exhausting all alternatives and provided there are no grounds for suspicion – no such person as referred to in no. 1 can be identified;

With respect to foundations, trusteeships and establishments with a structure similar to that of a foundation or trust enterprise, the following persons must be identified as beneficial owners:

1. natural persons, who are effective, non-fiduciary sponsors, founders or settlors, irrespective of whether they exercise control over the legal entity after its foundation;
2. natural or legal persons who are members of the foundation board or board of directors or of the trustee;
3. any natural persons who are protectors or persons in similar or equivalent functions;
4. natural persons who are beneficiaries;

5. if the beneficiaries have yet to be determined, the group of persons, in whose interests the legal entity is primarily established or operated.
6. in addition to the above, the natural persons who ultimately control the legal entity through direct or indirect ownership rights or in any other way;

### **Politically exposed persons**

The definition of “politically exposed person” (PEP) has been extended to encompass persons who are or have been entrusted with prominent public functions domestically and with respect to senior figures in international organisations.

### **Business profile**

It is set out more explicitly in the revised law that the information obtained with respect to the customer and the beneficial owner (including information on the origin of the deposited assets, economic background of the assets, occupation and business activity of the effective contributor of the assets, and intended use of the assets) needs to be reviewed at regular, risk-based intervals. For higher-risk business relationships, this review needs to be performed at least every two years.

### **Suspicious transaction reporting**

It is now clearly set out in the revised DDA that the responsibility for submitting suspicious transaction reports to the Financial Intelligence Unit (FIU) Liechtenstein lies with the member appointed at the executive level (board of directors or supervisory board).

Moreover, the FIU is now empowered to suspend the execution of a current transaction that might be connected with money laundering, predicate offences to money laundering, organised crime, or terrorist financing for a maximum period of two working days, irrespective of any suspicious transaction reports submitted. During this period the FIU may analyse the transaction, examine the reasons for suspicion, and subsequently forward the results of the analysis to the prosecution authorities.

### **Third-party reliance**

Even though this option is now only rarely used in practice, obliged firms may continue to have certain due diligence carried out by third parties, provided that they are domiciled in another EEA Member State or third country and their due diligence and record-keeping requirements and due diligence supervision are in line with the requirements of the 4th EU Anti-Money Laundering Directive. Based on the assessments of relevant international agencies, the FMA must issue a list of states that meet these requirements. The FMA is currently engaged in evaluating the relevant states.

### **Global application**

Financial institutions subject to due diligence that are part of a group must establish group-wide strategies and procedures to combat money laundering, etc., including data protection strategies and procedures for exchanging information within the group, and implement them effectively in the branches, agents, representative offices and subsidiaries located in third countries. Measures in third countries must at least correspond to the level of Liechtenstein rules, including measures relating to data protection.

In addition, it is now expressly pointed out that obliged firms with branches, agents, representative offices, and subsidiaries in another EEA Member State must ensure that these places of business comply with the national legislation of the other EEA Member State adopted for the implementation of the 4th EU Anti-Money Laundering Directive.

## **Data protection**

Prior to establishing a new business relationship or executing occasional transactions, the person subject to due diligence must now make the information referred to in Article 5(2) of the Data Protection Act available to the new customer. This information includes, in particular, a general reference to the legal obligations of the person subject to due diligence in connection with the processing of personal data.

In addition, obliged firms must delete personal data ten years after termination of the business relationship or after settlement of the occasional transaction, subject to special deadlines set out by law (e.g. deadlines set out in the General Civil Code).

## **Internal functions**

The obliged firms must now appoint a member at the executive level who is responsible for complying with the DDA and the associated ordinances. The executive level includes the management, the board of directors, the supervisory board, the managing board, or persons in a comparable function.

This person shall be provided with sufficient powers to ensure that the person subject to due diligence complies with due diligence law. The responsible member of the executive body can namely be held criminally responsible if monitoring processes or the organisation are deficient.

## **Reporting violations of the law**

The revised DDA now provides that obliged firms having 100 employees or more who are involved with business relationships must have appropriate procedures in place through which their employees can report violations of the DDA and the associated ordinances internally via a special, independent and anonymous channel.

## **Supervision**

Based on the requirements of the 4th EU Anti-Money Laundering Directive, the revised DDA provides for stronger risk-based supervision. For this purpose, the FMA must prepare a risk profile for each person subject to due diligence.

In this context, the predisposition to risk of the business of the person subject to due diligence must be taken into account, along with other factors. The risk profile is in particular used to determine the depth of ordinary inspections.

The information necessary for the preparation of the risk profile will be collected within the framework of an annual electronic reporting system (for the first time starting with the year 2018). The data to be reported is listed in the Due Diligence Ordinance and was specified in more detail in FMA Communication 2017/3.

Compliance with due diligence obligations on the part of Liechtenstein lawyers, law firms, and legal agents will in future be supervised by the Liechtenstein Chamber of Lawyers.

## **Supervisory measures and sanctioning powers**

Due to the new EU requirements, the range of possible supervisory measures has been extended. In addition, the maximum amount of fines for so-called “qualified infringements” was increased significantly (based on existing penalties under other Liechtenstein financial market supervision laws).

Financial institutions that violate certain due diligence obligations in a serious, repeated or systematic manner may be fined up to CHF 5 million or up to 10% of total annual turnover. Natural persons may be sanctioned with fines of up to CHF 5 million.

Further offences have also been transferred from the jurisdiction of the courts to the jurisdiction of the FMA. In addition, the liability of legal persons in administrative criminal proceedings has been introduced in line with the provisions of the Criminal Code (restricted to “qualified infringements”).

Yours faithfully

FMA – Financial Market Authority Liechtenstein



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