

FMA Guidelines 2018/19 – Licence as a bank or an investment firm

Guidelines on the granting of a licence to operate a bank or an investment firm in accordance with the Liechtenstein Law of 21 October 1992 on Banks and Investment Firms (Gesetz vom 21. Oktober 1992 über die Banken und Wertpapierfirmen; Bankengesetz, BankG – Banking Act; hereinafter referred to as the “BA”) and the Liechtenstein Ordinance of 22 February 1994 on Banks and Investment Firms (Verordnung vom 22. Februar 1994 über die Banken und Wertpapierfirmen; Bankenverordnung, BankV – Banking Ordinance; hereinafter referred to as the “BO”)

Reference:	FMA GL 2018/19
Addressees:	Banks and investment firms in accordance with the Banking Act of 21 October 1992 (BA) and the Banking Ordinance of 22 February 1994 (BO)
Concerning:	Procedure for obtaining a licence as a bank or an investment firm in Liechtenstein
Place of publication:	Website
Date of publication:	1 January 2015
Last amended on:	18 July 2023

1. General information

Undertakings with registered office in Liechtenstein intending to conduct banking business in accordance with Article 3(3) of the BA or provide investment services in accordance with Article 3(2) of the BA on a professional basis must hold a licence issued by the FMA prior to commencing their business activities (Article 15(1) of the BA).

The licence to operate a bank or an investment firm will only be granted if all the conditions set out in Articles 18 to 24 of the BA (including with respect to legal form, registered office, guarantees in respect of proper conduct of business, articles of association, organisational structure, and initial and minimum capital) are met.

1.1. Legal form

Banks and investment firms may only be established in the legal form of a company limited by shares (Aktiengesellschaft; AG) or a European Company (SE). In duly substantiated cases, the FMA may permit exemptions (Article 18(1) of the BA).

1.2. Foreign group

If the bank or investment firm is part of a foreign group that operates in the financial sector, the licence will only be granted if (in addition to the conditions set out in Articles 18 to 24 of the BA) the group is subject to consolidated supervision that is comparable to that in Liechtenstein and the supervisory authority of the home country of the foreign group does not object to the establishment of a subsidiary (Article 15(2) of the BA).

1.3. Company name

In accordance with Article 16(1) of the BA, undertakings may only use words or expressions indicating activities as a bank or an investment firm 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 a bank or an investment firm. Banks and investment firms headquartered abroad are permitted to use their company name in Liechtenstein. If there is a risk of this causing confusion, however, an explanatory name affix may be required. In cases in which the name of the parent company is used, the provisions stipulated under Article 16(3) of the BA must be observed. The FMA will verify that the company name is acceptable from a regulatory perspective.

1.4. Head office

The registered office and the head office of a bank or an investment firm must be situated in Liechtenstein (Article 18(2) of the BA). For the sake of completeness, it is stipulated that the operation of a shell bank is prohibited. A shell bank is any bank that does not have a physical presence within its home country and that is not part of group under reasonably consolidated supervision operating in the financial sector in accordance with Directive (EU) 2015/849 or other equivalent provisions (Article 15(4) of the BA).

The minimum level of assets in the country prescribed by the FMA is dependent upon the specific business model, for instance on whether it is operated purely on a digital level, the location of the target market, the identity of clients, etc. However, the FMA takes the view that the following minimum standard must always be complied with, irrespective of the particular business model:

- some of the members of the Executive Board must live within commuting distance;
- at least one member of the Board of Directors must have some link to Liechtenstein and live within commuting distance;
- the persons responsible for compliance and risk management functions must demonstrate knowledge of Liechtenstein law (Due Diligence Act,...) and must work primarily in Liechtenstein.

1.5. Initial and minimum capital

The initial capital must be fully paid up prior to commencing business operations. The minimum capital for banks is CHF 10 million, or the equivalent in euros or US dollars, and for investment firms CHF 730,000.00, or the equivalent in euros or US dollars. Where the circumstances so warrant, the FMA may require a different level of initial capital commensurate with the nature and scale of operations. The business plan must indicate whether the minimum initial capital requirement prescribed at the time of approval, factoring in start-up costs, has been met (Article 24 of the 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 24(4) of the BA, the own funds of an institution may not fall below the amount of initial capital required at the time of its authorisation.

Notwithstanding Article 24(1) of the BA, the initial capital for investment firms with administration rights¹ (see Article 30v of the BA) must be no less than CHF 125,000.00, or the equivalent in euros or US dollars (Article 30v(1) of the BA).

2. Qualifying holdings

Shareholders with qualifying holdings within the meaning of Article 4(1)(36) of the CRR must satisfy the applicable eligibility requirements in view of the requirement to ensure sound and prudent management of the bank or investment firm (Article 17(5) of the BA). Shareholders with relevant qualifying holdings are also examined by the FMA within the ambit of the procedure for the approval of a bank or investment firm.

3. Guarantee in respect of the proper conduct of business

3.1. Assessment of guarantees

Banks and investment firms must ensure that the members of the Board of Directors and the Executive Board as well as the head of the internal audit department at all times guarantee the proper conduct of business in both professional and individual terms. This also applies to all other key function holders at significant banks and investment firms (see Article 19 of the BA).

For the assessment of guarantees in respect of the proper conduct of business, reference is made to [FMA Communication 2013/07](#). Annex 4 of [FMA Communication 2013/07](#) (form for the assessment of guarantees) must be completed in accordance with the above-mentioned FMA Communication and submitted for all persons indicated.

When assessing the requirements, the FMA takes into account, for example, the factual and geographical scope of business and the organisational structure of the bank or investment firm. The intended persons must also be in a position to duly perform their tasks at the bank or investment firm when one takes into account their other duties and their place of residence.

¹ Investment firms with administration rights must exclusively provide investment services in accordance with Annex 2(A)(1)(1), (2), (4) and (5) of the BA. Their activities are therefore limited to the management of funds and securities on behalf of clients, the acceptance and transmission of orders, the execution of orders, portfolio management and the provision of investment advisory services (see Reports and Applications 2014/67, 80 – BuA 2014/67, 80).

3.2. Mandate ceilings, incompatibility and close relationships

When appointing members of the Board of Directors and the Executive Board, the mandate ceilings for members of governing bodies as defined under Article 29a of the BO must also be observed.

The persons entrusted with the administration and management of a bank or an investment firm must not belong to the FMA, the FMA Complaints Commission or their governing bodies, and no other close relationships between the bank or investment firm and other individuals or legal entities may exist that may hinder supervision. In addition, the proper supervision of banks or investment firms must not be impeded by any legal or administrative provisions of a third country, or by difficulties relating to the application thereof, to which natural persons or legal entities with which the bank or securities firm has close links are subject (see Article 20 of the BA).

4. Organisational structure

4.1. General organisational structure requirements

Under Article 22(1) of the BA, banks and investment firms must be organised appropriately according to their field of business and require:

- a Board of Directors comprising at least three members for the overall management, supervision and control of the bank or investment firm (see Article 33 of the BO);
- an Executive Board responsible for operations which must be composed of not less than two members with joint responsibility for performing the relevant functions; the members may not concurrently serve on the Board of Directors;
- an Internal Audit department that reports directly to the Board of Directors (see Article 33 of the BO with respect to the transfer of internal auditing duties);
- a Risk Management function that works independently of the operating business in accordance with Article 7a; and
- suitable procedures via which employees can report breaches against the BA and the CRR.

In addition, they also require at organisational level:

- a permanent, effective and independently working Compliance function which supports and monitors the persons responsible for the provision of services with respect to adherence to the applicable statutory and regulatory provisions (Article 34a of the BO);
- a Risk Management function that is independent of operational business areas (Article 21d of the BO).

Banks and investment firms must also continuously comply with the general organisational requirements stipulated in Article 31a of the BO.

4.2. Board of Directors and Executive Board

The division of duties between the Board of Directors (supervisory body) and the Executive Board must ensure the proper monitoring of the Executive Board (management body) (Article 22(4) of the BA). When selecting the members of the Board of Directors and the Executive Board, the topic of diversity must be borne in mind (Article 22(8) of the BA).

When selecting the members of the Board of Directors, care must be taken to ensure that there is always a reasonable minimum number of independent members of the Board of Directors (Article 22(8a) of the BA).

The Board of Directors is responsible for the overall management, supervision and control of the bank or investment firm. In particular, the Board of Directors' non-transferable duties under Article 23(2) of the BA and Article 31b of the BO comprise:

- The definition of the organisational structure and the adoption of regulations for corporate governance and control and for the management of the risk strategy, in particular by ensuring a separation of duties within the organisational structure and measures for the prevention of conflicts of interest as well as by ensuring their regular review and adjustment; the Board of Directors is accountable to the FMA with respect to the definition of these rules of procedure and the monitoring of their implementation, and must provide it with appropriate evidence on 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 persons entrusted with managing and representing the company;
- The supervision of the persons entrusted with the management of the company, including with respect to compliance with legal provisions, the articles of association and regulations as well as the business development of the company;
- The drawing-up of the annual report and approval of the interim financial statements as well as the preparation of the general meeting and the implementation of its resolutions;
- The monitoring of disclosure and communication activities;
- The regular monitoring and review of the suitability and implementation of the strategic objectives of the bank or investment firm during the provision of investment services and ancillary services and the performance of investment activities, the effectiveness of the rules of procedure of the bank or investment firm and the appropriateness of the corporate policy as regards the provision of services to clients and the setting of the required measures to eliminate any shortcomings.

If the Board of Directors comprises five or more members, it may delegate the duties that are not expressly reserved for it by law to a committee set up from amongst its ranks and made up of at least three members.

4.3. Articles of association and regulations

The articles of association and regulations must provide a precise description of the bank's or investment firm's factual and geographical scope of business. Other activities that fall outside the scope of banking business or investment services must be expressly mentioned in the articles of association. To be deemed valid, the articles of association must be approved by the FMA (Article 21 of the BA).

Articles of association

In accordance with Article 31(1) of the BO, 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 or investment firm are regularly conducted.

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 31(2) of the BO). 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 authority rules and provisions on risk management in accordance with Article 21c of the BO and provisions on transactions with governing bodies and employees in accordance with Article 9 of the BA (Article 31(2) of the BO).

The rules of procedure must also guarantee that the Board of Directors ensures the following (Article 31(3) of the BO):

- The definition, acceptance and monitoring of the business organisation with a view to the provision of investment services, ancillary services and investment activities, taking account of all

requirements to be complied with by the bank or investment firm; the requirements placed on the business organisation depend on the nature, scale and complexity of the business activities of the bank or investment firm; in particular, the skills, knowledge and experience required from the bank or investment firm's personnel as well as the resources, processes and regulations for the provision of services and the performance of investment activities by the bank or investment firm must be taken into account;

- The definition, acceptance and monitoring of a corporate policy with respect to the offered and provided or delivered services, investment activities, products and transactions in accordance with the risk tolerance of the bank or investment firm, and the special features and requirements of the clients to whom the foregoing are offered and provided or delivered, where applicable including the performance of appropriate stress tests;
- The definition, acceptance and monitoring of a remuneration policy for persons involved in the provision of services for clients that aims to ensure responsible corporate management, the fair treatment of clients and the avoidance of conflicts of interest in relation to clients.

4.4. Recording of communication

Under Article 31c of the BO, the bank or investment firm must ensure that the required recordings are kept for all of its services, activities and transactions. Recordings are required that allow the FMA to ensure that the bank or investment firm has met all of its obligations, including those with respect to its clients or potential clients and with a view to the integrity of the market.

4.5. Outsourcing of functions or activities

The outsourcing of functions or activities is only permitted if the conditions set out under Article 14a of the BA in conjunction with Articles 34b et seq of the BO are met. The guidelines on outsourcing arrangements ([EBA/GL/2019/02](#)) of the European Banking Authority (EBA) are applicable.

5. Licence application and licensing procedure

5.1. Informal preliminary application

Prior to submitting the application in accordance with Article 17(1a) of the 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, although its content must be limited to the review items/sub-aspects mentioned below. Here, it is important to comment on each issue with reference to any relevant documents appended.

Within its informal preliminary review, the FMA only examines material sub-aspects with reference to their non-approvability, and hence so-called "red flags". These checks cover the following topics:

- 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
- Origin of funds
To be submitted: a description of the origin of the funds that are to be used for the establishment of the company (including the statutory capital)
- Business plan (according to the requirements laid down by Article 5 of Delegated Regulation (EU) 2022/2580 and Article 17 of the BA)

To be submitted: a draft of the business model along with a detailed description of planned activities and the planned organisational structure as well as a budget plan for the first three financial years;

- 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)

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.

5.2. Licence application

As a general principle, licence applications and the accompanying documents must be submitted in German. The FMA may, upon request, permit exceptions to this rule.

The checklists made available in the Annex of these Guidelines must be used and enclosed. It is important to comment on each issue with reference to any relevant documents enclosed. A separate list of any enclosed documents must be provided, arranged in numerical order. The documents submitted will be checked carefully to ensure that the formal and substantive 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 signed licence application either in writing to the Liechtenstein Financial Market Authority (FMA), Banks Division, Legal Department, Landstrasse 109, P.O. Box 279, LI-9490 Vaduz, or by e-mail (info@fma-li.li) (Article 17 of the BA). Either a handwritten or a qualified electronic signature may be used. Article 3(1) of the Law of 27 February 2019 on Signature and Trust Services for Electronic Transactions (*Gesetz vom 27. Februar 2019 über elektronische Signaturen und Vertrauensdienste für elektronische Transaktionen; Signatur- und Vertrauensdienstegesetz, SigVG* – Signature and Trust Services Act; hereinafter referred to as the “STSA”) and Article 25(2) of Regulation (EU) 910/2014 are applicable as regards qualified electronic signatures.

5.3. Licensing 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.

All information provided by applicants will be treated as confidential and subject to professional confidentiality in accordance with Article 31a of the BA.

A fee will be charged in respect of the licensing procedure, as indicated in section 6 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 twelve months of receipt of the complete application. All rejections will be supported by reasons and communicated to applicants within six months of receipt of the application or, if the application is incomplete, within six months of the provision of the required details. (Article 17(3) of the BA).

The application is deemed to be complete if all necessary information (see section 5.4.) has been filed with the FMA. If the information contained in the application has been examined and found by the FMA to be incomplete, the FMA sends a request for supplementary information and provides the opportunity to submit the information indicated in the request. If the application is complete, the FMA informs the applicant that this is the case, stating the date on which the complete application or the information completing the application was received (Article 2 of Delegated Regulation 2022/2581).

The bank or investment firm must commence its business activities within one year, otherwise the licence will expire *ex lege* (see Article 27(1)(a) of the BA).

5.4. Application documents for the granting of a licence as a bank or an investment firm

The documentation that must be filed along with the licence application is indicated in Article 28(1) of the BO and Delegated Regulation (EU) 2022/2580 and is specified in the relevant checklist (see Annexes 2 to 6 of these Guidelines). All enclosures/documents must be numbered sequentially and submitted in an orderly manner. If the checklist refers to an enclosure, the enclosure and any material passages from the text must be marked unequivocally so as to enable unequivocal referencing between them. Duplicate submissions of individual documents must be avoided. The numbering previously stated must be continued for additional submissions.

Personal declarations (e.g. guarantee form, CV, etc.) must be either signed by hand and the original filed as a hard copy with the FMA or signed by qualified electronic signature and transmitted digitally to the FMA. Official or governmental confirmations (such as e.g. criminal records extracts, confirmations of residence, etc.) may only be filed in digital format if the document has been digitally issued by the competent body and bears a corresponding electronic administrative signature.

The documents, which need not be filed as originals, may also be submitted electronically (by e-mail).

A comprehensive statement from the external auditor concerning fulfilment of the prerequisites for approval, in particular concerning the intended organisational structure (including IT), corporate governance, the internal control system, risk management (under the EMA/PSA: the safeguarding of client funds) and the articles of association and regulations (where applicable in draft form) as well as the business plan must also be filed along with the application. This comprehensive statement may not be issued by a body that has been appointed as a future external auditor.

6. Charges

6.1. Licensing fee

The fee for the granting of the licence is CHF 100,000.00 for a bank (in the event of reduced initial capital in accordance with Article 24(2) of the BA: CHF 50,000.00) and CHF 30,000.00 for an investment firm (Article 30 in conjunction with Annex 1(A)(1)(a) and (b) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz*, FMAG; hereinafter referred to as the "FMA Act")).

6.2. Taxes

General information on the taxation of banks and investment firms may be obtained from the Liechtenstein Tax Administration (www.stv.llv.li).

6.3. 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*).

7. Expiration, withdrawal and revocation of licences

The rules governing the expiration, withdrawal and revocation of licences are set out in Articles 27 to 29 of the BA.

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) 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 and on the free movement of such data, and repealing Directive 95/46/EC) and in line with applicable data protection law.

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: <https://www.fma-li.li/de/fma/datenschutz/fma-information-zum-datenschutz.html>

Annex 1 – Legal basis

Annex 2 – Licence checklist for banks

Annex 3 – Licence checklist for investment firms

Annex 4 – Licence checklist for investment firms with administration rights

Annex 5 – Checklist for provision of MTF investment service

Annex 6 – Checklist for provision of OTF investment service

Annex 1 – Legal basis

- Liechtenstein Law of 21 October 1992 on Banks and Investment Firms (*Gesetz vom 21. Oktober 1992 über die Banken und Wertpapierfirmen; Bankengesetz, BankG – Banking Act, BA*);
- Liechtenstein Ordinance of 22 February 1994 on Banks and Investment Firms (*Verordnung vom 22. Februar 1994 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*);
- Commission Delegated Regulation (EU) 2022/2580 of 17 June 2022 (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*);
- FMA Guidelines 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 Guidelines 2017/9 – Disclosure requirements under the CRR/BA/BO (*FMA-Wegleitung 2017/9 – Offenlegungsanforderungen gemäss CRR/BankG/BankV*);
- FMA Guidelines 2017/7 – Liquidity requirements under the CRR/CRD IV (*FMA-Wegleitung 2017/7 – Liquiditätsanforderungen gemäss CRR/CRD IV*);

Annex 2 – Licence checklist for banks



Annex 3 – Licence checklist for investment firms



Annex 4 – Licence checklist for investment firms with administration rights



Annex 5 – Checklist for provision of MTF investment service

Annex 6 – Checklist for provision of OTF investment service