

Allgemeines Treuunternehmen

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Due diligence by the Liechtenstein financial intermediary in the processing of financial transactions

1. Terms and scope

This publication is intended for two groups of persons: on the one hand, foreign financial intermediaries who are subject to supervision in their home country, who require a licence to conduct business and whose activity is governed, inter alia, by a money-laundering law; and, on the other, Liechtenstein financial intermediaries who are subject to the Liechtenstein Law on Due Diligence (published in the Official Gazette No. 116, 1996, as amended, in the current version of 2000, No. 213), in particular, banks, financial companies, trustees, investment enterprises, insurance companies and bureaux de change. The amendments to the law require the Liechtenstein financial intermediary to provide a substantially higher degree of traceability in his activities, a change which has repercussions on the cooperation between Liechtenstein financial intermediaries and foreign financial intermediaries.

The reader must bear in mind that this is an extremely complex subject and that

further clarifications are still awaited from the Government and the Financial Services Authority. The plan is that a working group established by the Government will answer questions of detail raised by Liechtenstein financial intermediaries.

2. The duties of the Liechtenstein financial intermediary under the Law on Due Diligence

The Liechtenstein financial intermediary is required:

- a) to lay down internal guidelines;
- b) to establish a due diligence file for every business relationship, containing the following:
 - b1) the identity of the contracting partner and the determination of the beneficial owner or owners;
 - b2) the business profile;
 - b3) the internal reports (addressed, as a rule, to the investigating officer for the annual review) in respect of any particular clarifications established when suspicions arise, in accordance with Art.9. Para. 1 of the Law on Due Diligence, together with all

documents and papers used in the preparation of the reports;

- c) to notify the Financial Services Authority of the names of the following: Financial Services Authority contact person, due diligence compliance officer, investigating officer (functions which may be discharged by a single person);
- d) to provide up-to-date and comprehensive instruction and training in due diligence matters;
- e) to draw up an internal annual report in the form laid down in the Ordinance to the Law on Due Diligence and to submit it or make it available to the management of his firm and the authorized external auditor, respectively auditing firm;
- f) to establish an appropriate internal organization, taking into account the size and nature of the business and the number, type and complexity of business relationships;
- g) to report to the Financial Intelligence Unit, an office independent of the Financial Services Authority, if, after the business relationship has been initiated and after the

economic background, the purpose of the financial transaction and the origin of the assets have been clarified, suspicion remains (justified suspicion¹) that there is a connection with money-laundering, with a prior act of money-laundering or with organized crime (it will be recalled that such reporting is an obligation not a right!);

- h) to be prepared for an annual inspection by the Financial Services Authority or, on its behalf, by external auditors or auditing firms acting with appropriate authorization from the Government.

The documents referred to under point b) above must be kept in Liechtenstein. The same applies to the working papers, documents and data carriers prepared by the auditors.

3. Preparation of a due diligence file for every business relationship

For the purposes of the Law on Due Diligence, the cooperation between Liechtenstein financial intermediaries and foreign financial intermediaries (contracting partner, authorized person or mandated third party) consists essentially in drawing up, monitoring, adapting and correcting the business profile. The business profile serves to distinguish between ordinary and extraordinary transactions.

The business profile comprises:

1. particulars of the contracting partner
2. particulars of the beneficial owner
3. particulars of any authorized person
4. economic background and origin of the assets deposited
5. occupation and business activity of the beneficial owner
6. application of the assets.

The information referred to in points 1-6 above must be documented². If more than one person is involved, then particulars must be supplied for all of them.

The purpose of these documents is to show that the data contained in the profile stem from sufficiently plausible bases. The nature and the quantity of the documentation are at the discretion of the Liechtenstein financial intermediary and will vary from one mandate to another.

4. Supervision / clarifications by the Liechtenstein financial intermediary

Financial intermediaries who are subject to the Law on Due Diligence are responsible for monitoring the propriety of business activity with their contracting partners and must seek clarifications if the nature and circumstances of a financial transaction depart from the established business profile. This

applies particularly if the transaction is not consistent with the known economic background or the usual business activity of the contracting partner or beneficial owner, or if other inconsistencies arise which engender a suspicion of a connection with money-laundering, a prior act of money-laundering or organized crime.

5. Cooperation between the Liechtenstein financial intermediary and the foreign financial intermediary (contracting partner)

Usually, the foreign financial intermediary is the contracting partner of the Liechtenstein financial intermediary, i.e. a person subject to the obligation of due diligence under the law of Liechtenstein. In consequence, communication, instructions and messages are passed via this foreign financial intermediary. In order to determine the identity of the contracting partner for the purposes of the Law on Due Diligence, what matters is not the person with whom the agreement of authorization was concluded but the person with whom the Liechtenstein financial intermediary habitually communicates in financial transaction matters.

¹ A *justified suspicion* exists if, on the basis of adequate objective evidence, there is a probability of money-laundering. In its statement to the Parliament on this subject (No. 73/2000, p. 17 et seq), the Government said: «In any event, there must be adequate factual evidence, a simple feeling on the part of the financial intermediary being insufficient With regard to Art.9 Para. 1, the message (*on the Swiss Money-Laundering Law*) states that a suspicion is justified if it is based on a specific piece of evidence or a number of clues which permit it to be feared that the assets have a criminal origin.»

² Apart from the documents used to obtain the particulars under points 1-3, supporting documentation may include, depending on circumstances: note of a conversation with a bank official as proof of origin; bank deposit statements as evidence of assets deposited; business reports, commercial register extracts for suppliers, customers and agents; invoices, contracts, shipping documents; business report, product catalogue for the main activity of the beneficial owner; budget document for planned sales; information on the nature, volume and frequency of payments traffic.

5.1. Identification of the foreign financial intermediary

Legal entities

If the foreign financial intermediary (contracting partner) is a legal entity, it must be identified by a trade register extract issued no more than six months earlier. The extract must be an original or be certified as a true copy by the trade register or a notary public. The extract or an equivalent document must provide the information needed for identification purposes.

If the foreign financial intermediary (contracting partner) is an entity quoted on a state-supervised stock exchange and carries on a business, trade or other commercial activity in its country of domicile, the requirement for documentary proof of identity does not apply.

Natural persons

The surname, first name, date of birth, home address, place of residence and nationality must be provided. If it is not the Liechtenstein financial intermediary himself who makes the copy of the passport or identity card, then a copy certified by a notary public is required. If an authenticated copy is available, subsequent mandates may refer to the identification already carried out, provided that no new passport or identity card has been issued in the meantime.

If the foreign financial intermediary (contracting partner) is a lawyer in a law firm, a (certified) copy of a passport must be obtained from one or more of the lawyers acting as alternative mandators (contracting partners). It will be noted that the lawyers may give their home address or the registered office of the law firm.

If the particulars of the foreign financial intermediary (contracting partner) are not obtained in the course of a visit (so-called preliminary personal interview), the information which is not contained in the copy of the passport must be confirmed by letter or fax.

It is not always possible to obtain a certified copy of a passport. In such an eventuality, an acceptable alternative could be a certified translation of the passport, attached with the copy of the passport. Another alternative is confirmation of the identity of the foreign financial intermediary by the competent authorities at his place of residence.

5.2. Determination of the beneficial owner

The foreign financial intermediary (contracting partner) must confirm in writing the identity of the ultimate beneficial owner, providing the Liechtenstein financial intermediary with the surname, first name, date of birth, home address, place of residence and nationality of the beneficial owner, as well as his occupation and business activity.

A legally valid written declaration by the foreign financial intermediary (contracting partner) will normally be accepted only if he is appropriately qualified (e.g. bank, a member of a self-regulated organization). Where possible, a copy of the passport of the beneficial owner will also be submitted.

In practice, a legal entity can be the beneficial owner only if it is quoted on a state-supervised stock exchange (proof to be provided). Otherwise, it is necessary to discover who lies behind the legal entity, i.e. it is necessary to name

the shareholders or the beneficial owners (natural persons, not nominees) and provide the necessary particulars.

5.3. Economic background and origin of the assets deposited; application of assets

The foreign financial intermediary stands as the contracting partner and the party responsible for communication with the Liechtenstein financial intermediary. In this capacity, he is required to supply the relevant information and supporting documents (see Chapter 3 – «Establishing a due diligence file for each business relationship»).

What is the time limit for the provision of the information and the supporting documents? In principle, the information and the supporting documents must be supplied to the Liechtenstein financial intermediary during the course of acceptance of the business relationship. The Liechtenstein financial intermediary can proceed with the foundation and open the bank account, provided that he is in possession of the information (without the documents). However, he is not allowed under any circumstances to send originals or copies of the company documents to the foreign financial intermediary until the business profile has been finally completed and the Liechtenstein financial intermediary is in possession of the required attachments.

6. Summary

In practice, the cooperation between the Liechtenstein financial intermediary and the foreign financial intermediary with regard to due diligence should proceed as follows (examples):

1. The foreign financial intermediary is the contracting partner of the Liechtenstein financial intermediary and enters his particulars in a so-called «A1» - Identification form (the Liechtenstein financial intermediary provides the foreign financial intermediary with a copy of this form, though the foreign financial intermediary can, of course, use an equivalent document for the written declaration). The foreign financial intermediary, as contracting partner, signs and returns the form.
2. If the contracting partner is a natural person (e.g. a lawyer) and the contracting partner cannot be visited, a certified copy of the passport must be delivered to the Liechtenstein financial intermediary. This applies even if the foreign financial intermediary has been personally known to the Liechtenstein financial intermediary for years.
3. The foreign financial intermediary also enters the name and full particulars of the beneficial owner in the «A1» form. In addition, the foreign financial intermediary must send the Liechtenstein financial intermediary a copy of the passport of the beneficial owner (which does not need to be certified).
4. The Liechtenstein financial intermediary also provides the foreign financial intermediary with a copy of the so-called «B1» - Business Profile form (though the foreign financial intermediary can, of course, use an equivalent document). The foreign financial intermediary, as contracting partner, fills in the form to indicate the business profile (for the beneficial owner), i.e. the economic background and the origin of the assets deposited, the occupation and business activity of the beneficial owner, and the application of the assets. Supporting documents/vouchers must be attached to this form so that the Liechtenstein financial intermediary can assess the profile independently. Here again, the contracting partner has to sign the «B1» form.
5. The business profile (Form «B1») must be established for all existing mandates though, in most cases, this can be done by reference to the existing bookkeeping or bank vouchers.
6. For all mandates, the originals or copies of bank vouchers must be sent to the Liechtenstein financial intermediary either daily (directly from the bank) or at certain intervals, depending on the mandate and the type of financial transactions. In future, this condition will apply to all mandates established before 1 January 2001.
7. In the case of trading companies for which the foreign financial intermediary acts as the bookkeeper, the foreign financial intermediary must send the Liechtenstein financial intermediary the relevant annual bookkeeping records (financial report, general ledger, vouchers, correspondence) needed to enable him to form a view of the business activity. It should be noted that, with immediate effect, these documents will no longer be returned but will be retained by the Liechtenstein financial intermediary.
8. If it is evident to the Liechtenstein financial intermediary from the bank vouchers that the transactions do not coincide with the established profile, he is required to contact the foreign financial intermediary.
9. In point 4 above, it was noted that the business profile must be supplemented by means of «Documents/Vouchers» (see also Chapter 3). Depending on the type of business, such documents may include memoranda (e.g. where the foreign financial intermediary is a bank establishing a foundation for an existing customer), trade register extracts and/or business reports relating to the beneficial owner, which serve to clarify the economic background and the origin of the assets deposited, their application and the activity of the beneficial owner. In the case of a commercial activity, then, depending on the nature and volume of transactions, the Liechtenstein financial intermediary may also require specimen invoices or contracts during the financial year.

The Liechtenstein financial intermediary and the foreign financial intermediary must both bear in mind that the purpose of monitoring and processing of information is to distinguish between ordinary and extraordinary transactions.

From practice up to the present time, it may be noted that documentary proof is not required for every individual financial transaction. However, the financial transactions must be sufficiently plausible.

7. Support by a mandated third party

The special provision of Art. 24 of the Ordinance to the Law on Due Diligence (Liechtenstein Official Gazette 2000, No. 236, «Support by a mandated third party») has proved to be unusable in

connection with the foreign financial intermediary as contracting partner and, for that reason, will not be discussed further.

Once the authorities have provided clearer guidance, we will return to this topic.

Note:

For further information, please contact the author of this article, Mr Roger Frick (business economist, certified accountant), at the Allgemeines Treuunternehmen.

Notes on Bulletin No. 5

The declaration of signature by the board of directors must contain full particulars, as shown in the supplement to ATU Bulletin No. 5. In any event, the attentive reader will have noted that there is some reduction in formality with regard to the Establishment (Anstalt), Trust reg. (Treuunternehmen) and Foundation (Stiftung).

Auditor's acceptance declaration

With effect from 1 March 2001, the Land and Public Registry requires the auditor's acceptance declaration to contain the following additional terms:

Establishment (Anstalt), Trust reg. (Treuunternehmen)

It is hereby confirmed that the independence requirement stipulated in Art. 191a et seq PGR is fulfilled. In addition, the surname, first name and private address of the chief auditor are to be communicated. These particulars will be lodged with the Land and Public Registry.

Company Limited by Shares (Aktiengesellschaft), Private Limited Company (GmbH)

It is hereby confirmed that the independence requirement stipulated in Art. 191a et seq, 350 and 400a PGR is fulfilled. In addition, the surname, first name and private address of the chief auditor are to be communicated. These particulars will be lodged with the Land and Public Registry.

Allgemeines Treuunternehmen

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| Aeulestrasse 5 | Telephone | +(423) 237 34 34 |
| P.O. Box 83 | Fax | +(423) 237 34 60 |
| FL-9490 Vaduz | | |
| Principality of Liechtenstein | | |

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