

## Instruction

<b>Publication:</b>	FMA website
<b>Re:</b>	Issuance of a licence to operate a payment institution pursuant to the Payment Services Act of 17 September 2009 (PSA) and the Payment Services Ordinance of 27 October 2009 (PSO)

This Instruction contains an overview of the licensing procedure for establishing a payment institution in Liechtenstein. Individual cases are governed solely by the legal provisions and the orders of the Financial Market Authority (FMA) Liechtenstein acting as the supervisory authority. The FMA is happy to provide additional information.

### 1. General provisions

Undertakings wanting to provide payment services on a professional basis in Liechtenstein in accordance with Article 7 PSA require a licence issued by the FMA to take up their business activities as a payment institution.

The licence to operate a payment institution is granted only if all preconditions set out in Article 10 PSA (including legal person, registered office and central administration in Liechtenstein, organisational structure, risk monitoring, accounting, initial capital, external auditor, articles of association) are met.

#### 1.1. Payment services

According to Article 3(1)(20) PSA, payment services include the following services:

- services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;
- services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;
- execution of payment transactions, including transfers of funds on a payment account with the payment service provider of the payment service user or with another payment service provider:
  - execution of direct debits, including one-off direct debits;
  - execution of payment transactions through a payment card or a similar device;
  - execution of credit transfers, including standing orders;
- issuing and/or acquiring of payment instruments;
- money remittance;
- execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is

made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.

## **1.2. Applicant**

The applicant must be a legal person (Article 10(1)(a) PSA).

## **1.3. Registered office and central administration**

The registered office and central administration of a payment institution must be situated in Liechtenstein (Article 10(1)(b) PSA).

## **1.4. Governance arrangements**

Article 10(1)(c) PSA requires sound and prudent management of a payment institution, sound governance arrangements, and effective processes to identify, manage, monitor, and report risks, as well as adequate internal control mechanisms, including sound administrative and accounting processes. The processes and mechanisms for this purpose must be comprehensive and adequate to the nature, scope and the complexity of the payment services provided by the payment institution.

## **1.5. Qualifying holding**

Shareholders with a qualifying holding (10% or more) must be suitable taking into account the need to ensure the sound and prudent management of the payment institution (Article 10(1)(d) PSA).

## **1.6. Links**

There may be no close links between the payment institution and other natural or legal persons that prevent effective exercise of supervision (Article 7(1)(e) PSA). Close links exist if, for instance, two or more natural or legal persons are linked by:

- participation, i.e., the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, or
- control, i.e., the relationship between a parent undertaking and a subsidiary, or a similar relationship between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings.

## **1.7. Supervision**

Furthermore, no circumstances may exist that prevent effective supervision (e.g., because of legal or administrative provisions of a third country applicable to one or more natural or legal persons to whom the payment institution has a close link) (Article 7(1)(f) PSA).

## 1.8. Capital

Initial capital is composed of paid-in capital, including any share premium account, and any reserves and profit carried forward, and it must be fully paid in.

The initial capital must amount to at least:

- for payment institutions operating payment services in accordance with Article 3(1)(20)(f) PSA, 40,000 Swiss francs or the equivalent in euros;
- for payment institutions operating payment services in accordance with Article 3(1)(20)(g) PSA, 100,000 Swiss francs or the equivalent in euros;
- for payment institutions operating payment services in accordance with Article 3(1)(20)(a)-(e) PSA, 250,000 Swiss francs or the equivalent in euros.

Please note that the FMA may, in justified cases, order an increase in these amounts. The initial capital also represents the amount of the equity capital of the payment institution that must be met at all times (Article 7(1)(g) in conjunction with Article 11 PSA).

Moreover, payment institutions must maintain adequate own funds. The own funds may at no time fall below the amounts determined for the initial capital and in accordance with the PSO (Article 12 PSA).

## 1.9. Safeguarding assets

According to Article 13 PSA, the payment institutions must safeguard assets they have received from payment service users or via another payment service provider for the execution of payment transactions. The different options for safeguarding assets are referred to in Article 5 PSA.

## 1.10. Safekeeping obligation

Payment institutions have a safekeeping obligation in regard to all relevant records and receipts for a period of ten years (Article 14 PSA).

## 1.11. Outsourcing of responsibilities

Outsourcing of responsibilities within Liechtenstein or abroad is permissible only if the preconditions set out in Article 15 PSA in conjunction with Article 3(1)(b) PSO are met.

## 1.12. Use of agents

If a payment institution intends to provide payment services via agents, the payment institution must transmit the information to the FMA enumerated in Article 16 PSA for the purpose of verification by the FMA.

## 1.13. Accounting

The accounting provisions of the Law of 21 October 1992 on Banks and Investment Firms (Banking Act; BA) apply to payment institutions *mutatis mutandis*. In the circumstances referred to in Article 18(2) PSA, payment institutions are required to present separate accounting information, for which an audit report must be prepared.

## 1.14. External auditor

Pursuant to Article 19 PSA, the payment institution must have its business activity audited each year by an independent external auditor recognised by the FMA (see also Article 6 PSA).

### **1.15. Administration and management**

The professional and personal qualities of the persons entrusted with the administration or management of a payment institution must always guarantee sound and proper business operation. In particular, the persons intended to serve as members of the general management must, on account of their training or previous career, have sufficient professional qualifications for the tasks to be assigned to them. To evaluate the designated persons, the FMA may consult their curricula vitae, education and work credentials, and references. Moreover, the designated persons must enjoy a good reputation as business persons (Article 3(1)(i) PSO and Articles 29 and 30 of the Ordinance on Banks and Investment Firms (Banking Ordinance; BO)).

## **2. Licensing procedure**

During the licensing procedure, the FMA conducts a thorough and comprehensive review of the legal and financial circumstances of the applicant. The FMA may first request a draft of the final licence application (application for preliminary review) without original documentation.

The application for preliminary review must in principle be structured in the same way and include the same information and documentation as the final licence application (on the structure, see the remarks in point 3 of this Instruction below). Each point must be described, and a reference must be made to the corresponding enclosures for each point.

The enclosures must be listed and numbered in a separate schedule of enclosures. The submitted documents are subjected to a comprehensive formal review. The FMA informs the applicant of any ambiguities and necessary corrections.

The applicant must submit the final licence application (with or without a preliminary review) in writing, including all documents enumerated in point 3 of this Instruction, to the Financial Market Authority (FMA) Liechtenstein, Banking Division, Legal Section, Landstrasse 109, P.O. Box 279, LI-9490 Vaduz, Liechtenstein (Article 9 PSA in conjunction with Article 3 PSO).

If any facts relevant to the licence change during the licensing procedure, updated documents must be submitted without delay.

All information provided by the applicant is treated confidentially and is subject to official secrecy in accordance with Article 34 PSA.

The licensing procedure is subject to a fee; see point 4 of this Instruction.

The duration of the licensing procedure depends primarily on the conclusiveness and completeness of the information and documents submitted with the application. Within three months after receipt of the application or, if the application is incomplete, within three months after the required information has been submitted, the FMA must either grant the licence or provide reasons for refusal of the application in writing (Article 10(3) PSA).

### **3. Licence application and issuance of the licence**

The licence application and the documents to be submitted with the application must in principle be in German. The FMA may grant exceptions.

The application must be submitted to the FMA, including all required documentation in accordance with the structure set out below (especially in accordance with Article 3 PSO). Where applicable, a reference to the appropriate document (enclosure) must be made. Concession applications must be delivered to the FMA in physical and electronic form.

#### **3.1. Application materials for a licence as a payment institution**

The application for a licence as a payment institution must include the following information and documentation in particular:

- the business model, setting out in particular the type of payment services envisaged;
- the business plan including a forecast budget calculation for the first three financial years;
- evidence that the payment institution holds the necessary initial capital;
- a description of the measures taken for safeguarding clients' assets;
- a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management, and accounting procedures;
- a description of the internal control mechanisms in order to comply with due diligence legislation, etc.
- a description of the applicant's structural organisation (where applicable, a description of the intended use of agents and branches and a description of outsourcing arrangements);
- the identity of persons holding in the applicant, directly or indirectly, qualifying holdings within the meaning of Article 3a(1)(8) of the Banking Act, and the size of their holdings;
- the identity of directors and persons responsible for the management of the payment institution and, where relevant, persons responsible for the management of the payment transactions of the payment institution, as well as evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services;
- the names of the statutory auditors and external auditor;
- the applicant's legal form and articles of association; and
- the registered office and the address of the central administration of the applicant.

Other application materials:

- declaration by an auditor recognised by the FMA that it accepts the mandate as an external auditor (declaration of acceptance by the external auditor, head of mandate, lead auditor);
- declaration by the external auditor that it approves the draft articles of association and business regulation;
- description of the IT solution;
- detailed statement by the external auditor on the envisaged organisation (including IT), the safeguarding of payment service users' assets, risk management, governance, and the internal control system (Article 3(2) PSO);
- job descriptions/requirement profiles;
- marketing concept.

Please note that the FMA may request additional documentation.

### **3.2. Qualifying holding**

In the case of a qualifying holding, the following documents must be provided in accordance with Article 10(1)(d) PSA:

- information on shareholders with a qualifying holding (10% or more), register extracts, articles of association, business regulations, annual reports, audit reports, etc., in the case of legal persons;
- curricula vitae, extracts from the criminal register, information on any pending judicial or administrative proceedings, etc., in the case of natural persons.

If all information and documents referred to in point 3 have been provided and the FMA finds them to be in order, the FMA issues a licence.

## **4. Costs**

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

The fee for the issuance of a licence for a payment institution is CHF 30,000.00 (Article 30 in conjunction with Annex 1 Section 1 of the Financial Market Authority Act).

### **4.2. Taxes:**

General information on the taxation of banks and investment firms can be obtained from the Liechtenstein Fiscal Authority ([www.stv.llv.li](http://www.stv.llv.li)).

### **4.3. Fee for entry in the Commercial Register:**

The fees for entry in the Commercial Register and for public certification are governed by the Ordinance on Land and Commercial Register Fees.

## 5. Expiration, withdrawal, and revocation of the licence

The legal foundations for the expiration, withdrawal, and revocation of a licence are set out in Articles 20-23 of the Payment Services Act. According to Article 22 PSA, the FMA may in particular amend or revoke licences if the payment institution obtained the licence surreptitiously by providing false information or if the FMA was not aware of significant circumstances.

Please note that the licence expires if business activities are not initiated within one year (Article 20(1)(a) PSA).

## 6. The most important legal foundations

- Payment Services Act of 17 September 2009 (PSA);
- Payment Services Ordinance of 27 October 2009 (PSO);
- Law of 21 October 1992 on Banks and Investment Firms (Banking Act; BA);
- Ordinance of 22 February 1994 on Banks and Investment Firms (Banking Ordinance; BO);
- Law on Persons and Companies of 20 January 1926 (PGR);
- Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (Due Diligence Act; DDA);
- Ordinance of 17 February 2009 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (Due Diligence Ordinance; DDO);
- Law of 18 June 2004 on the Financial Market Authority (Financial Market Authority Act; FMA Act);
- FMA Communication 2013/7: Guarantee of sound and proper business operation.

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