

FMA Guidelines 2018/18 – Licence as an e-money institution

Guidelines for the granting of a licence as an e-money institution in accordance with the Liechtenstein E-Money Act of 17 March 2011 (*E-Geldgesetz vom 17. März 2011, EGG* – hereinafter referred to as the “EMA”) and the Liechtenstein E-Money Ordinance of 12 April 2011 (*E-Geldverordnung vom 12. April 2011, EGV* – hereinafter referred to as the “EMO”)

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1. General information

These Guidelines provide an overview of the procedure for obtaining a licence on establishing an e-money institution in Liechtenstein. 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. In particular, the guidelines on the information to be provided for the authorisation of e-money institutions ([EBA/GL/2017/09](#)¹) must be applied. Please contact the FMA for further information.

Companies wishing to issue e-money in Liechtenstein on a professional basis must obtain a licence as an e-money institution from the FMA prior to commencing business in accordance with Article 4 of the EMA.

In addition to the issuing of e-money, the following, for example, is covered under the licence in accordance with Article 5(2) EMA:

- The provision of payment services in accordance with Article 2(2) (a) to (h) of the Liechtenstein Payment Services Act of 6 June 2019 (*Zahlungsdienstegesetz vom 6. Juni 2019, ZDG* – hereinafter referred to as the “PSA”)
- The granting of loans in connection with payment services in accordance with Article 2(1)(2)(g) and (h) PSA
- The provision of business services and closely related ancillary services linked to the issuing of e-money
- The operation of payment systems as specified under Article 4(1)(53) PSA
- Business activities that do not involve the issuing of e-money, provided this does not breach any other legal provisions

The licence to operate an e-money institution will only be issued if all conditions stipulated under Article 7 EMA (including registered office and head office in Liechtenstein, organisational structure, risk monitoring, accounting, initial capital, auditors and articles of association) are met.

¹ also see [FMA Communication 2016/03](#).

2. Registered office and head office

The registered office and the head office of the e-money institution must be situated in Liechtenstein (Article 7(1)(b) EMA).

3. Governance arrangements

Article 7(1)(c) EMA requires the sound and prudent management of the e-money institution, solid corporate governance as well as effective procedures for the identification, management, monitoring and reporting of risks and adequate internal control mechanisms, including sound management and accounting practices. The procedures and mechanisms in place in this regard must be comprehensive and appropriate with respect to the nature, scale and complexity of the e-money services provided by the e-money institution.

4. Supervision and close relationships

There may be no circumstances that hinder proper supervision (e.g. statutory and administrative requirements of a third country that one or more individuals or legal entities with close relationships to the e-money institution are subject to) (Article 7(1)(f) EMA).

5. Administration and management

The persons entrusted with the administration and management of an e-money institution must not belong to the FMA, the FMA Complaints Commission or their governing bodies, and no other close relationships between the e-money institution and other individuals or legal entities may exist that may hinder supervision (Article 7(1)(e) EMA).

The persons charged with the administration and management of an e-money institution must meet the professional and personal requirements to ensure the proper conduct of business at all times. In particular, the persons intended for the Executive Board must be appropriately qualified for the intended position on the basis of their education and career history (see [FMA Communication 2013/07](#)).

6. Capital

The initial capital of an e-money institution must be at least EUR 350,000.00, or the equivalent in Swiss francs. The FMA may increase this figure in duly substantiated cases. As the initial capital simultaneously represents the amount of an e-money institution's capital, this must not be fallen below at any time (Article 8 EMA).

7. Safeguarding of funds

Under Article 11 EMA, e-money institutions must adequately safeguard the funds received from clients either directly or indirectly and inform the FMA in advance about any material changes with respect to the safeguarding of funds. Article 5 EMO must be observed in this regard. E-money institutions have the option to safeguard the funds according to one of the two variants stipulated under Article 20 PSA.

8. Retention obligation

E-money institutions are subject to a retention obligation of 10 years for all relevant recordings and documents (Article 12 EMA).

9. Outsourcing of tasks

The outsourcing of tasks in Liechtenstein or abroad is only permitted if the conditions set out under Article 13 EMA in conjunction with Article 6 EMO are met.

10. Accounting

The provisions of 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”) apply accordingly to the accounting activities of e-money institutions. E-money institutions are required to present separate financial information for the issuance of e-money and other activities, with an audit report being prepared on this basis (Article 16 EMA).

11. Auditors

Under Article 17 of the EMA, e-money institutions are required to have their business activities audited each year by an independent firm of auditors recognised by the FMA (see also Article 7 EMO).

12. Qualifying holdings

Shareholders with qualifying holdings within the meaning of Article 4(1)(36) 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”) must satisfy the applicable eligibility requirements in view of the requirement to ensure sound and prudent management of the e-money institution (Article 7(1)(d) in conjunction with Article 9 EMA).

With respect to a qualifying holding, any proposed direct or indirect acquisition, any proposed direct or indirect increase or any proposed disposal of a qualifying holding in an e-money institution must be reported to the FMA (Article 9 EMA; see [FMA Guidelines 2018/6](#)).

13. Licence application and licensing procedure

13.1. Licence application

The applicant should submit the licence application, including the checklist (see Annex 2) and enclosures, by writing to the Liechtenstein Financial Market Authority (FMA), Banks Division, Legal Department, Landstrasse 109, P.O. Box 279, 9490 Vaduz, Liechtenstein (Article 6 EMA in conjunction with Article 3 EMO). The application documents are also to be submitted electronically at the same time as the written application.

All information to be submitted to the FMA as part of the licence application must in principle be submitted as original documents (and, where applicable, notarised and apostilled) in German or as an officially certified translation. Following consultation with the FMA, information can be provided in English or other languages.

As part of the checklist (see Annex 2), the application documents (Article 3 EMO; see section 13.4) are to be recorded, numbered and enclosed with it.

13.2. Informal preliminary application

Prior to submitting the application in accordance with Article 6 EMA, 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 and contain the same information and documents as the definitive licence application (please refer to section 13.4 of these Guidelines for specific requirements). Here, it is important to comment on each issue with reference to any relevant documents appended.

It should be noted that only key sub-aspects are checked for red flags as part of the informal preliminary review. 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: description including proof of origin of funds of the funds that are to be used for the establishment of the company (including the statutory capital)

- Business plan

To be submitted: draft of the business plan including description of the business model as well as the budget plan for the first three years

- Complete group structure with details of relationships (share capital and voting rights)

To be submitted: 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.

13.3. Licensing procedure

During the licensing procedure, the FMA will undertake a formal and substantive legal and financial assessment of the licence application. The FMA will inform the applicant of any matters that are unclear and need to be corrected and can issue improvement orders.

A fee will be charged in respect of the licensing procedure (see section 14.1).

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 subject to professional confidentiality in accordance with Article 34 EMA.

The duration of the licensing procedure will depend primarily on the coherence and completeness of the information and the documents provided within the framework of the application. Within three months of receipt of the application or, if this is incomplete, within three months of the provision of all information required for the licensing procedure, the FMA must either grant the applicant a licence or inform the applicant in writing about the rejection of the application and provide reasons (Article 7(3) EMA).

The FMA will inform the applicant as soon as all of the information required for the licence has been received.

13.4. Application documents for a licence as an e-money institution

The following information and documents, in particular, must be enclosed with the application for a licence as an e-money institution (Article 7 EMA in conjunction with Article 3 EMO and EBA/GL/2017/09):

- Identification details
- The business model demonstrating, in particular, the nature of the intended e-money services
- A business plan, including a marketing plan, with a budget plan for the first three financial years and information about own funds, including the amount, and information on the capital requirements and their calculation in accordance with Article 10 EMA
- A description of the applicant's organisational structure, including, where applicable, a description of the planned use of agents and branches, as well as an account of any outsourcing agreements and a description of the manner of its participation in a national or international payment system
- Evidence of initial capital in accordance with Article 8 EMA
- A description of the measures for safeguarding the funds of e-money users and/or payment services users in accordance with Article 5 EMO

- A description of the corporate governance and internal control mechanisms of the applicant, including the administration, risk management and accounting practices
- A description of the procedures for monitoring, handling and following up on security incidents and security-related client complaints
- The procedures for recording, monitoring, tracking and restricting access to sensitive payment data
- Business continuity arrangements
- The principles and definitions applicable to the recording of statistical data on performance, transactions and cases of fraud
- Security strategy document
- A description of the internal control mechanisms for ensuring compliance with requirements relating to the prevention of money laundering and terrorist financing, in particular the requirements set out under due diligence legislation, including Regulation (EU) No. 2015/847
- Identity and assessment of suitability of persons with a qualifying holding in the applicant
- Identity and suitability assessment of the directors and persons responsible for the management of the e-money institution
- Identity of statutory auditors and audit firms

Other supporting documents:

- A declaration from an FMA-recognised firm of auditors that it accepts the mandate of external auditor (declaration of acceptance by the firm of auditors, mandate head and lead auditor)
- A declaration from a firm of auditors that it is in agreement with the draft articles of association and draft rules of procedure
- Detailed statement of the firm of auditors with respect to the intended organisational structure (including IT), the safeguarding of client funds, risk management, corporate governance and the internal control system (Article 3(2) EMO)
- Job descriptions/requirements profiles

The FMA may also request additional documents.

14. Charges

14.1. Licensing fee

A fee of CHF 30,000.00 is payable for the granting of a licence as an e-money institution (Article 30 in conjunction with Annex 1(A) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz, FMAG* – hereinafter referred to as the “FMA Act”).

14.2. Taxes

General information on the taxation of e-money institutions may be obtained from the Liechtenstein Tax Administration (www.stv.llv.li).

15. 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*).

16. Expiration, withdrawal and revocation of licences

The rules governing the expiration, withdrawal and revocation of licences are set out in Article 19 et seqq. of the EMA. In accordance with Article 21 EMA, the FMA may, in particular, amend or revoke licences where the e-money institution obtained the granted licence by providing false information or material circumstances were not disclosed to the FMA.

Please note that the licence will expire if the business activities are not commenced within one year (Article 19(1)(a) EMA).

17. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) No. 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](https://www.fma.li.li/de/fma/datenschutz/fma-information-zum-datenschutz.html)

18. Entry into force

This Communication comes into effect on 1 January 2015.

Annex 1 – Legal basis

Annex 2 – Licence checklist

Annex 1 – Legal basis

- Liechtenstein E-Money Act of 17 March 2011 (EMA) (*E-Geldgesetz vom 17. März 2011, EGG*)
- Liechtenstein E-Money Ordinance of 12 April 2011 (EMO) (*E-Geldverordnung vom 12. April 2011, EGV*)
- Liechtenstein Payment Services Act of 6 June 2019 (PSA) (*Zahlungsdienstegesetz vom 17. September 2009, ZDG*)
- Liechtenstein Payment Services Ordinance of 17 September 2019 (PSO) (*Zahlungsdiensteverordnung vom 27. Oktober 2009, ZDV*)
- 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*)
- Liechtenstein Law of 18 June 2004 on the Financial Market Authority (*Gesetz vom 18. Juni 2004 über die Finanzmarktaufsicht; Finanzmarktaufsichtsgesetz, FMAG – Financial Market Supervision Act, FMA Act*)
- FMA Communication 2013/07 – Assessment of guarantees in respect of the proper conduct of business (*FMA-Wegleitung 2013/07 – Prüfung der Gewähr für einwandfreie Geschäftstätigkeit*)
- FMA Guidelines 2018/6 – Prudential assessment of qualifying holdings in e-money institutions under the Liechtenstein E-Money Act (EMA) (*FMA Wegleitung 2018/6 – Aufsichtsrechtliche Beurteilung von qualifizierten Beteiligungen bei E-Geld-Instituten gemäss E-Geldgesetz (EGG)*)
- EBA/GL/2017/09 – European Banking Authority (EBA) Guidelines on the information to be provided for the authorisation of payment institutions and e-money institutions and for the registration of account information service providers under Article 5(5) of Directive (EU) 2015/2366

Annex 2 – Licence checklist

