

## **FMA Guidelines 2018/22 – Agents**

Review of agents 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 Payment Services Act of 17 September 2009 (*Zahlungsdienstegesetz vom 17. September 2009, ZDG* – hereinafter referred to as the “PSA”)

Reference:	FMA GL 2018/22
Addressees:	E-money institutions in accordance with the EMA of 17 March 2011 Payment institutions in accordance with the PSA of 17 September 2009
Concerning:	Review of agents in accordance with the EMA and PSA
Place of publication:	Website
Date of publication:	23 November 2018
Last amended on:	–

### **1. General information**

These Guidelines provide an overview of the review procedure prior to the use of agents by e-money institutions and payment institutions 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. Please contact the FMA for further information.

E-money institutions and payment institutions are permitted to provide payment services via an agent (see Article 16(1) PSA and Article 14(2)(2) EMA). Agents are individuals or legal entities that execute payment services on behalf of a payment institution or an e-money institution (see Article 3(1)(1) PSA and Article 3(1)(e) EMA).

E-money institutions are permitted to have e-money distributed and/or redeemed via individuals or legal entities acting on their behalf (Article 14(1) EMA). These persons, however, are not deemed to be agents within the meaning of Article 3(1)(e) EMA and Article 3(1)(1) PSA.

The issuing of e-money via agents or persons as defined under Article 14(1) EMA is forbidden in accordance with Article 14(2) EMA.

### **2. Commissioning of an agent in a different EEA Member State**

An e-money institution or a payment institution licensed in Liechtenstein that wishes to provide payment services in the territory of a different EEA Member State through the commissioning of an agent must notify the FMA of this accordingly in writing (Article 25(1) in conjunction with Article 23(1) and (2) EMA, and Article 26(1) in conjunction with Article 24(1) PSA).

Following receipt of all documentation, the FMA will transfer the details to the competent authority of the EEA host Member State within one month and inform it about the intention to enter the person in the relevant register (Article 25(1) in conjunction with Article 23(4) EMA, and Article 26(1) in conjunction with Article 24(4) PSA). Taking account of the opinion of the competent authority of the EEA host Member State, the FMA will enter such persons in the E-money Institution Register or

Payment Institution Register if the relevant conditions are met (Article 25(1) EMA and Article 26(1) PSA).

If the competent authority of the EEA host Member State has sufficient grounds to suspect that money laundering or terrorist financing within the meaning of Directive (EU) 2015/849 is taking place, has taken place or has been attempted in connection with the planned commissioning of an agent, or that the planned commissioning of an agent increases the risk of money laundering or terrorist financing occurring and informs the FMA accordingly, the FMA must refuse the entry of the persons involved in the relevant register or, if the entry has already been made, withdraw the entry (Article 25(2) in conjunction with Article 23(6) EMA, and Article 26(2) in conjunction with Article 24(6) PSA).

The payment institution or e-money institution will inform the FMA of the time as of which it will commence its activities via the agent in the EEA host Member State. The FMA will notify the competent authority in the EEA host Member State accordingly.

After being entered in the Payment Institution Register, the agents are permitted to commence their activities in the EEA host Member State involved.

### **3. Commissioning of an agent in Liechtenstein**

If an e-money institution or a payment institution authorised in a different EEA Member State intends to provide payment services in Liechtenstein through the commissioning of an agent, the competent authority of the EEA home Member State must notify the FMA (see Article 26 in conjunction with Article 24(1) EMA, and Article 27 in conjunction with Article 25(1) PSA).

Following receipt of all information in accordance with Article 24(2) and (3) of the EMA and Article 25(2) and (3) PSA, the FMA issues confirmation to the e-money institution or payment institution that it is permitted to commence the provision of the relevant services.

Prior to the entry of an agent in the Payment Institution Register, the FMA may, as stipulated under Article 16(3) of the PSA, take further measures to review the received information if it believes that the details provided to it are incorrect. Should the FMA not be convinced that the details provided to it are correct after taking these measures to review the received information, it will refuse the entry of the agent in the Payment Institution Register in accordance with Article 16(4) of the PSA.

If a Liechtenstein e-money institution or payment institution intends to use an agent in Liechtenstein, the procedure is governed in accordance with Article 16 of the PSA.

### **4. Administration and management**

The members of an agent's Executive Board or the persons responsible for the management of an agent who are utilised for the provision of payment services must be able to guarantee the proper conduct of business from a professional and personal standpoint at all times (see Article 16(1)(c) in conjunction with, as applicable, Article 14(2) EMA). In particular, the persons intended for the agent's Executive Board must be appropriately qualified for the intended position on the basis of their education and career history and be reliable.

To assess the persons intended for the agent's Executive Board, the FMA always reviews the following:

1. Original, up-to-date, dated and signed CV (information in accordance with FMA Communication 2013/07)
2. Passport or identity card (colour copy)
3. Original criminal records extracts from all relevant countries (no older than six months)
4. Original extract from the debt collection register or other proof of financial soundness from all relevant countries (no older than six months)

## 5. Liability

E-money institutions or payment institutions are fully liable for the actions of their agents. Agents inform clients that they are acting on behalf of e-money institutions or payment institutions (Article 15(1) and (3) EMA and Article 17(1) and (3) PSA).

## 6. Agent details

As a general principle, the details to be provided to the FMA must be submitted in German. The FMA may permit exceptions to this rule.

The following information and documents are to be enclosed for the FMA (Article 16(1) PSA in conjunction with, as applicable, Article 14(2)(2) EMA):

1. Name and address of the agent
2. A description of the internal control mechanisms applied by the agent in order to meet the requirements set out under due diligence legislation, in particular with respect to:
  - The determination and verification of the contractual partner's identity (Article 6 Liechtenstein Due Diligence Act (*Sorgfaltspflichtgesetz, SPG* – hereinafter referred to as the “DDA”))
  - The determination and verification of the beneficial owner's identity (Article 7 of the DDA)
  - The documentation obligations (Article 20 DDA)
  - The risk assessment (Article 9a DDA)
  - The processes and measures in place where enhanced due diligence obligations apply
  - The process for uncovering transactions for which there is an obligation to file a suspicious transaction report to the Liechtenstein Financial Intelligence Unit (FIU) in accordance with Article 17(1) DDA as well as the process for submitting the report
  - The measures implemented for the education and further training of the agent and agent employees in accordance with Article 32 Liechtenstein Due Diligence Ordinance (*Sorgfaltspflichtverordnung, SPV* – hereinafter referred to as the “DDO”)
3. The names of the agent's Executive Board members and the persons responsible for the management of the agent that is to be called on for the provision of payment services as well as, in the case of agents that do not operate as payment services providers, evidence that they are reliable and possess the appropriate professional skills (see section 4)
4. An opinion of the special-law auditing firm on the documents stated under sections 6.2 and 6.3

If an agent in a different EEA Member State is commissioned, the following details must also be provided in addition to the aforementioned information (see Article 25(1) in conjunction with Article 23(2) EMA, and Article 26(1) in conjunction with Article 24(2) PSA):

5. The name and address of the e-money institution or payment institution
6. The EEA Member State in whose territory the agent will perform its activities or has its registered office
7. The nature of the payment services that the agent intends to provide for the e-money institution or payment institution
8. A comprehensive description of the agent's organisational structure (number of business divisions and employees; an organisational chart that shows the reporting lines to the e-money institution or payment institution) and how the agent has been integrated within the structure of the payment institution or e-money institution
9. A comprehensive description of the agent's participation in a national or international payment system, or details as to whether the agent intends to participate in such a payment system

10. A description of the integration of the agent in the internal control system of an e-money institution or a payment institution, including an account of the permanent and periodic control processes that have been implemented by the e-money institution or payment institution in order to check proper compliance with the requirements set out under due diligence legislation by the agent
11. An opinion of the special-law auditing firm on the documents stated under sections 6.8 to 6.10

It should be noted that the FMA may request additional documents where required.

## **7. Charges**

### **7.1 Fee**

For legal entities, the fee for the review of an agent is CHF 2,000.00 plus CHF 200.00 per employee who executes payment services. For individuals, the corresponding fee is CHF 1,000.00 plus CHF 200.00 per employee who executes payment services (Article 30 in conjunction with Annex 1(A)(1)(I) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz, FMAG* – hereinafter referred to as the “FMA Act”)).

### **7.2 Taxes**

General information on the taxation of agents may be obtained from the Liechtenstein Tax Administration ([www.stv.llv.li](http://www.stv.llv.li)).

## **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) 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>

**Annex 1 – Legal basis**

**Annex 2 – Review scheme for agents in Liechtenstein**

**Annex 3 – Review scheme for agents in a different EEA Member State**

## **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 17 September 2009 (PSA) (*Zahlungsdienstegesetz vom 17. September 2009, ZDG*)
- Liechtenstein Payment Services Ordinance of 27 October 2009 (PSO) (*Zahlungsdienstverordnung 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*)

## **Annex 2 – Review scheme for agents in Liechtenstein**



## **Annex 3 – Review scheme for agents in a different EEA Member State**

In addition to the information pursuant to Annex 2, the information as stipulated under Commission Delegated Regulation (EU) 2017/2055 of 23 June 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions ([Commission Delegated Regulation \(EU\) 2017/2055](#)) must also be submitted.

