

## **FMA Instructions 2017/3 – Instructions on establishing a management company**

Instructions on establishing a management company under the Liechtenstein Act of 28 June 2011 on Certain Undertakings for Collective Investment in Transferable Securities (Gesetz vom 28. Juni 2011 über bestimmte Organismen für gemeinsame Anlagen in Wertpapieren, UCITSG; hereinafter referred to as the “UCITS Act”) and the Liechtenstein Ordinance of 5 July 2011 on Certain Undertakings for Collective Investment in Transferable Securities (Verordnung vom 5. Juli 2011 über bestimmte Organismen für gemeinsame Anlagen in Wertpapieren, UCITSV; hereinafter referred to as the “UCITS Ordinance”)

Reference:	FMA GL 2017/3
Addressees:	–
Re.:	Authorisations of management companies under the UCITS Act and UCITS Ordinance
Place of publication:	Website
Date of publication:	16 January 2017
Last amended on:	–

These Instructions provide an overview of the authorisation procedure on establishing a management company under the UCITS Act in Liechtenstein. Unless otherwise specified, these Instructions also apply to self-managed investment companies. 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.

### **1. General information**

Companies intending to manage an undertaking for collective investment in transferable securities (UCITS) or to make a public offer or market units of a UCITS on a professional basis, either in or from Liechtenstein, must be authorised by the FMA prior to commencing business (Article 8(1) of the UCITS Act).

As well as authorising the management of approved UCITS, the FMA may authorise management companies to provide the following services, as specified in Article 14(2) of the UCITS Act:

a) Management of portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis, provided that the portfolios concerned are composed of one or more financial instruments

b) Where the authorisation extends to services under a):

1. Investment advice
2. Safe keeping and administration
3. Reception and transmission of orders

Self-managed investment companies are only permitted to manage their own assets (Article 14(3) of the UCITS Act).

Authorisation to operate a management company or self-managed investment company will only be granted if all the conditions set out in Article 15 of the UCITS Act are met (including registered office, guarantee in respect of the proper conduct of business, business plan, organisational structure and capital base).

### **1.1. Company name**

In accordance with Article 12(4) of the UCITS Act, companies may only use words or expressions indicating activities as a management company in the company name, in any descriptions of the purposes of the business and in business advertising if they have been authorised to operate as a management company. The FMA will verify that the company name is acceptable from a regulatory perspective.

### **1.2. Qualifying holdings**

Shareholders with qualifying holdings (10% or higher) must satisfy the applicable eligibility requirements in view of the requirement to ensure sound and prudent management of the management company (Article 23 of the UCITS Ordinance).

### **1.3. Head office and legal form**

The registered office and the head office of the management company must be situated in Liechtenstein (Article 15(1)(e) of the UCITS Act). The management company must be a legal entity or limited partnership (Article 20(1) of the UCITS Ordinance).

### **1.4. Guarantee in respect of the proper conduct of business**

The persons charged with managing the management company must meet the professional and personal requirements to ensure the proper conduct of business at all times (Article 15(1)(b) of the UCITS Act). Any persons designated to manage the company must, in particular, be appropriately qualified for the intended position on the basis of their education and career history. They must also have a minimum of three years of relevant full-time experience (Article 21(5) of the UCITS Ordinance in conjunction with Article 7(1)(c) of the Liechtenstein Asset Management Act [*Vermögensverwaltungsgesetz, VVG*]).

The persons concerned must be able to discharge their responsibilities at the management company properly, having regard to their other obligations, their place of residence, the infrastructure and the organisation of the company (Article 21(3) of the UCITS Ordinance).

In assessing the relevant individuals, the FMA may refer to their curriculum vitae (CV), educational certificates, evidence of employment and employer's references.

### **1.5. Business plan**

Management companies must submit a viable business plan (Article 15(1)(c) of the UCITS Act). In accordance with Article 20(3) of the UCITS Ordinance, the business plan must include information on the organisation, staff, premises and office equipment as well as a projected balance sheet and projected profit and loss account, as verified by the auditors, for at least the first three financial years. The time frames for attaining the projected targets are to be indicated.

### **1.6. Organisational structure**

Management companies must have a suitable permanent establishment in Liechtenstein, both in terms of staffing and premises, and the organisational structure required for the performance of their functions. Further information is set out in FMA Communication 2011/4 regarding organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company. Management companies must have:

- a Board of Directors or Supervisory Board responsible for overall management, supervision and control;
- 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.

The company shall establish the following positions and functions, depending on the nature, volume and complexity of its operations and the type and range of services supplied:

- a Compliance function;
- an Internal Audit function;
- a Risk Management function;
- an authority responsible for dealing with investor complaints.

In addition, appropriate procedures must be established for dealing with breaches of the UCITS Act and market abuse legislation by employees.

### **1.7. Initial and minimum capital**

In accordance with Article 17 of the UCITS Act, management companies are required to have initial capital of at least EUR 125,000 or the equivalent in Swiss francs. Self-managed investment companies are required to have initial capital of at least EUR 300,000 or the equivalent in Swiss francs. In addition, the company's own funds must be equal to or greater than 0.02% of the amount by which the value of the portfolios under management exceeds EUR 250 million or the equivalent in Swiss francs. Notwithstanding the aforementioned capital requirement, the capital held must be equivalent to one quarter of the preceding year's fixed overheads. The capital must be fully paid up prior to commencing business operations.

## **2. Authorisation procedure**

During the authorisation procedure, the FMA will undertake a thorough legal and financial assessment of the applicant's circumstances (please refer to section 3 of these Instructions for specific requirements).

It is important to comment on each issue with reference to any relevant documents appended. A separate list of any appended documents must be provided, arranged in numerical order. The documents submitted will be checked carefully to ensure that the formal 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 application for authorisation, including all the information and documents referred to in section 3 of these Instructions, by writing to the Liechtenstein Financial Market Authority (FMA), Securities and Markets Division, Legal Department, Landstrasse 109, P.O. Box 279, 9490 Vaduz, Liechtenstein.

If there are any changes in material facts during the authorisation 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 126 of the UCITS Act.

A fee will be charged in respect of the authorisation procedure, as indicated in section 4 of these Instructions.

The duration of the authorisation process will depend primarily on the coherence, quality and completeness of the information and documents provided at the application stage. Confirmation of receipt is to be sent to applicants within three working days of receipt of the complete application. If the application

is incomplete, the missing documents are to be requested. In all circumstances, a decision must be made within one month of receipt of the full set of application documents (Article 16(4) of the UCITS Act).

### **3. Applying for authorisation**

As a general principle, applications for authorisation and the accompanying documents must be submitted in German or English. The FMA may require applications to be submitted in German, but will accept applications in other languages for legitimate reasons on a case-by-case basis.

The application, including all the requisite documents, must be sent to the FMA. Applicants should refer to supporting documents (appendices) where appropriate. Applications for authorisation are to be submitted to the FMA in hard copy and electronic format.

The documents to be provided in support of an application for management company authorisation include, in particular:

- request in writing;
- completed application form (the additional supporting documents to be provided are also specified in the application form);
- business plan;
- draft articles of association or deed of partnership;
- declaration of acceptance by a firm of auditors recognised by the FMA (lead auditor);
- evidence of the capital specified (deposit confirmation or bank guarantee);
- calculation of the available and required equity capital;
- confirmation from the Commercial Registry that the company is registrable;
- documents evidencing that the proper conduct of business is ensured by reason of the persons charged with the administration and management of the company:
  - descriptions of functions
  - original copies of CVs which must be signed and dated
  - copies of degree certificates, educational certificates, evidence of employment and employer's references demonstrating professional competence and qualifications
  - colour copy of a passport or some other identification document
  - criminal records excerpts (original documents less than three months old)
  - statements pertaining to any pending criminal and administrative proceedings that would affect the performance of duties and an undertaking to notify any relevant changes; these statements must be signed and the originals submitted
  - personal statement as to whether bankruptcy or composition proceedings have been instituted or concluded without the possibility of appeal
- diagram showing the ownership structure down to the last owner;
- guidelines on making investment decisions;
- risk management guidelines including risk map;
- guidelines on conflicts of interest;
- compliance guidelines;
- internal audit guidelines;
- rules on employee transactions;
- description of measures in place to prevent money laundering and terrorist financing.

The Executive Board must also confirm that there are no grounds for refusal as set forth in Article 15(2) of the UCITS Act. It should be noted that the FMA may request additional documents where required.

## 4. Charges

### 4.1. Licensing fee

A fee of CHF 20,000 is generally payable for granting authorisation and, where conditions are imposed, CHF 25,000 (Article 30 in conjunction with Appendix 1(C)(2a) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz; FMAG – FMA Act*)).

### 4.2. Taxes

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

### 4.3. 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*).

## 5. Notification

Liechtenstein management companies are permitted to operate under the right of freedom to provide services within the EEA or by setting up a branch office in the relevant EEA host Member State. By way of notification, management companies are required to submit a request to the FMA for this purpose. Instructions on the procedures for notifying operation as a UCITS management company are available on the FMA website. Liechtenstein UCITS may also be marketed in other EEA Member States.

## 6. Expiration and withdrawal of authorisation

The rules governing the expiration and withdrawal of authorisation are set out in Articles 27 and 28 of the UCITS Act. Article 28(1)(e) of the UCITS Act provides, for example, that FMA authorisations may be withdrawn if the management company obtained the authorisation by making false statements or by any other irregular means.

## 7. Key legislation and legal rules

- Liechtenstein Act of 28 June 2011 on Certain Undertakings for Collective Investment in Transferable Securities (*Gesetz vom 28. Juni 2011 über bestimmte Organismen für gemeinsame Anlagen in Wertpapieren; UCITSG – UCITS Act*)
- Liechtenstein Ordinance of 5 July 2011 on Certain Undertakings for Collective Investment in Transferable Securities (*Verordnung vom 5. Juli 2011 über bestimmte Organismen für gemeinsame Anlagen in Wertpapieren; UCITSV – UCITS Ordinance*)
- 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*)
- FMA Communication 2011/4 regarding organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company