FMA

Financial Market Authority
Liechtenstein

**FMA Instruction 2019/10 – Approval of a securities prospectus**

Instruction on approval of a securities prospectus pursuant to the Law on Implementation of Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (EEA Securities Prospectus Implementation Act; EWR-WPPDG) and directly applicable Regulation (EU) 2017/1129

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| Reference: | FMA I 2019/10 |
| Addressees: | Issuers under the Prospectus Regulation (Regulation (EU) 2017/1129) |
| Re: | FMA C 2019/2 |
| Place of publication: | Website |
| Date of publication: | 15 October 2019 |
| Last amended on: | March 24th 2021 |

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This Instruction provides an overview of the approval procedure for securities prospectuses under the EWR-WPPDG and Regulation (EU) 2017/1129 in Liechtenstein. It presents the documents to be submitted as part of the approval procedure and explains the relevant processes.

## 1. General remarks

When securities are offered to the public or admitted to trading on a regulated market, disclosure of information is a crucial component of investor protection, given that it eliminates information asymmetries between investors and issuers. Subject to Article 3(1) of Regulation (EU) 2017/1129, securities may be offered to the public in Liechtenstein only if a prospectus drawn up and approved in accordance with the provisions of Regulation (EU) 2017/1129 and Commission Delegated Ordinance (EU) 2019/980 as well as Commission Delegated Ordinance (EU) 2019/979 has been published in advance. Exemptions from the obligation to publish a prospectus are set out in Article 1(4) of Regulation (EU) 2017/1129 and Article 3 EWR-WPPDG.[1]

According to the legal definition (Article 2(r) of Regulation (EU) 2017/1129), "approval" means the positive act at the outcome of the scrutiny by the home Member State's competent authority of the completeness, the consistency and the comprehensibility of the information given in the prospectus. The FMA does not verify the accuracy of the information in a securities prospectus, in particular the warranted characteristics (e.g. trustee security status, high earnings opportunities, greatest possible security, low volatility). The issuer of the security is in principle responsible for the accuracy of the information given in a securities prospectus (see Article 11 of Regulation (EU) 2017/1129).

## 2. Approval procedure

a) Competence of the FMA

The FMA is in principle responsible for approving prospectuses only if the issuer's registered office is in Liechtenstein (home Member State). In the case of issuers with registered offices in a third country, there is a one-time right to choose between the EEA State in which the securities are to be offered to the public for the first time and the EEA State in which the first application for authorisation is made. Once this choice has been made, the chosen supervisory authority is also responsible for further issuances.

b) Materials to be submitted

The following materials must be submitted as part of the approval procedure:

- written application to the FMA with justification of the applicable annex to Commission Delegated Regulation (EU) 2019/980
- securities prospectus: a single copy of the prospectus with original signatures must be submitted
- table of correspondence for the annex used: the table of correspondence must show which part of the prospectus contains the information required by the annexes
- prospectus summary
- metadata file[2]

[1] With regard to the exemptions, see the information on the FMA website.
[2] The metadata has to be submitted in accordance with FMA Instruction 2021/15 after the notice of the upcoming approval of the prospectus:
https://www.fma-li.li/de/aufsicht/bereich-wertpapiere-und-markte/wertpapierprospekte/direktformular.html

- a legal opinion on differentiation from the possible applicability of other special legislation[3]

The application materials must be sent physically to the FMA and by email to the address prospectus@fma-li.li.

c) Time limits

The FMA decides on approval within 10 working days of receipt of the complete application (Article 20(2) of Regulation (EU) 2017/1129). The time limit is 20 working days where the prospectus involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public (Article 20(3) of Regulation (EU) 2017/1129). The receipt of the documents by mail (no e-mail) is essential for the time frame.
If the application is incomplete or if further questions are necessary, these time limits do not start to run until the application is complete and/or replies to the questions have been received.

If no decision is taken within these time limits, this shall not be deemed to be approval (i.e. no implied approval).

The FMA will inform the issuer in the event of an upcoming positive decision and will ask for the final documents to be submitted. Not before the receipt of the final documents decision an approval is possible. The following documents must be submitted to the FMA:

To be submitted by email to the address prospectus@fma-li.li
• Final and signed (basic) prospectus (1 pdf file)

Using the direct form
• Complete metadata

To have a good chance of approval for a subsequent prospectus before the previously approved securities prospectus expires, the new application must be submitted early enough (at least 6-8 weeks before the desired approval date). If an approval is required within a specific timeframe, it is recommended that the schedule for the approval process is discussed with FMA at an early stage. In these cases, the expected approval date can already be provisionally included in the draft prospectus. It should be noted, however, that any discussed timeframe is non-binding and FMA does not guarantee that an approval will take place within the timeframe.

Notification of approval is in principle sent to the issuers by means of a provisional administrative order. Foreign issuers are advised to appoint a domestic service agent in order to accelerate postal delivery.

## 3. Supplements

A prospectus is valid for 12 months after its approval for offers to the public or admissions to trading on a regulated market.

Every significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated

[3] It is expressly pointed out that, in addition to securities prospectus law, other laws may be applicable. The issuer is solely responsible for examining whether the issue or the business model may, in particular, be a fund. A legal opinion must be submitted to the FMA as evidence of the differentiation.

market begins, whichever occurs later, must be mentioned in a supplement to the prospectus and submitted to the FMA for approval (Article 23 of Regulation (EU) 2017/1129). Once the supplement is complete, it must be approved within five working days of receipt. The receipt of the documents by mail (no e-mail) is essential for the time frame.

The FMA will inform the issuer in the event of an upcoming positive decision and will ask for the final documents to be submitted. Not before the receipt of the final documents decision an approval is possible. The following documents must be submitted to the FMA:

To be submitted by email to the address prospectus@fma-li.li
• Final and signed (basic) prospectus (1 pdf file)

Using the direct form
• Complete metadata

## 4. Notifications

The prospectus, including any supplements, is valid in any number of host Member States without any additional approval procedure for an offer to the public or admission to trading (European passport). Applications for notification must be sent by email to prospectus@fma-li.li or may already be included in the application for approval.

Updated and complete metadata using the direct form have to be submitted to FMA with a notification. In the case of a translation of the summary, the final translation(s) has also be enclosed in a single PDF file for all countries or languages and the complete metadata has to be submitted using the direct form.

The FMA forwards the required documents to the competent authorities of the host Member States and to the European Securities and Markets Authority (ESMA) within one working day of receipt of the application or approval.

## 5. Final Terms

Final Terms, which are neither within the base prospectus nor a supplement included, have to sent to FMA prior to the public offering:

To be submitted by email to the address prospectus@fma-li.li
• Final and if relevant signed Final Terms (1 pdf file)

Using the direct form
• Complete metadata

## 6. Fees

The costs are defined in the Financial Market Authority Act (FMAG). Annex 1(C)(3) FMAG sets out the fee rates for the various activities enumerated in Regulation (EU) 2017/1129 and the EEA Securities Prospectus Implementation Act:

a) for approval and filing of a prospectus or base prospectus consisting of one document or several individual documents: CHF 5,000;
b) for approval and filing of a prospectus or base prospectus supplement: CHF 500;

c) for filing the final conditions in connection with the base prospectus: CHF 200;
d) for approval and filing of a standard registration form: CHF 3,500;
e) for filing a standard registration form: CHF 200;
f) for approval and filing of a securities note and summary: CHF 1,500;
g) for approval and filing of a supplement to the registration form: CHF 200;
h) for approval and filing of a simplified prospectus: CHF 3,000;
i) for approval and filing of an EEA growth prospectus: CHF 3,000;
k) for authorisation of omission of information: CHF 200;
l) for suspension of publicity: CHF 1,500;
m) for prohibition of publicity: CHF 2,500;
n) for disallowance of an offer to the public or admission to trading on a regulated market: CHF 5,000;
o) for suspension of trading on a regulated market: CHF 2,500;
p) for approval of the prospectus of an issuer having its registered office in a third country: CHF 5,000;
q) for the issue of an appealable order in the event of refusal of approval in connection with a), b), d), f), g), h), i) or p): the same charge as for the approval.

## 7. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) 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) as well as in line with applicable data protection law.

Information regarding the processing of personal data, as well as details about the processing purpose, the data controller and the rights of data subjects can be found in the FMA Privacy Policy: https://www.fma-li.li/en/fma/data-protection/fma-privacy-policy.html

## 8. Amendments

With the amendment from March 24th 2021, the instructions were supplemented with details on the documents to be submitted to FMA and the final process prior to an approval. In addition, the explanations for using the direct form for the metadata have been included.

## 9. Entry into force

This Instruction enters into force on 15 October 2019.

The amendment from March 24th 2021 came into force on April 1st 2021.

The FMA is available for any questions.
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Email: prospectus@fma-li.li