

Josef Bergt

# Collection of Laws of Liechtenstein

Commercial and business law



Prof. Dr. iur. Josef Bergt LL.M. LL.M.

## COLLECTION OF LAWS

### OF LIECHTENSTEIN

#### LAW

Commercial and Business Law  
and Related Matters As of  
01.05.2022 | 2nd Edition

LR217.0	German General Commercial Code (ADHGB)
LR.10	Labor Code (ARG)
LR 215.211.7	E-Commerce Act (ECG)
LR 215.211.	8Distance Financial Services Act (FernFinG) LR.1 Trade Act (GewG)
LR 930.	11Trade Regulation (GewV)
LR.216.41	Hague Trust Law Convention (HTC) LR216.012 Commercial Register Ordinance(HRV)
LR215.211.4	Consumer Credit Act (CCA)
LR.2	(PRG)
LR215.112.2	Products Liability Act (PHG)
LR173.510	Lawyers Act (RAG)
LR 173.	32Legal Guardian Act (RpflG) LR640.0 Tax Act (SteG)
LR 216.	013Foundation Law Ordinance (StRV)
LR 950.	6Token and VT Service Providers Act (TVTG).
LR950.61	Token and VT Service Provider Ordinance (TVTV) LR173.520 Trustee Act (TrhG)
LR 0.215.211.	1UN Sales Law (CISG)
LR240	Unfair Competition Act (UWG) LR275.1 Civil Mediation Act(ZMG)
LR 952.1	Due Diligence Act (DDA)
LR 952.11	Duty of Care Ordinance (DDA)

## Imprint

Bibliographic information of the German National Library: The German National Library lists this publication in the German National Bibliography; detailed bibliographic data are available on the Internet at <http://dnb.dnb.de>.

It is pointed out that the publication of this collection of laws of Liechtenstein does not constitute an official publication. Only the legal provisions duly published in the National Law Gazettes are valid. Since 01.01.2013, only the signed electronic LGBl version is authoritative and authentic (PDF/A format). For legal provisions published by 31.12.2012, the paper version published in the Provincial Law Gazette is binding.

The Liechtenstein legal provisions can be accessed at the following link: <https://www.gesetze.li/>

European legal acts can be accessed at the following link: <https://eur-lex.europa.eu/>

Whether a Union act is applicable in Liechtenstein depends on a decision of the EEA Joint Committee Decision (JCD). Whether or not such a decision exists can be found on the EFTA website: <https://www.efta.int/eea-lex>.

Despite careful editing, all information is provided without guarantee and liability for the completeness and accuracy of the content is excluded.

*Correctly, some of the matters in this collection of legal regulations are not (primarily) assigned to civil law. However, due to their general importance in economic life and their connection with other norms listed in this work, they have been included here.*

Publisher: Josef Bergt | Status 01.05.2022 | 2nd edition

<https://www.bergt.law/> | <https://www.bergtlaw.at/> | <https://bergt.tax/>

Production and publisher: BoD - Books on Demand, Norderstedt

ISBN: 3 978-3-7562-1672-7





## Table of contents

I.	German General Commercial Code .....	1
II.	Labor Code.....	57
III.	E-Commerce Act .....	83
IV.	Remote Financial Services Act.....	97
V.	Trade Act .....	105
VI.	Trade Regulation .....	130
VII.	Hague Trust Law Convention .....	176
VIII.	Commercial Register Ordinance.....	185
IX.	Consumer Credit Act.....	249
X.	Package Travel Act .....	274
XI.	Products Liability Act .....	296
XII.	Lawyers Act.....	300
XIII.	Judicial Officer Act.....	346
XIV.	Tax law .....	356
XV.	Foundation Law Ordinance.....	439
XVI.	Token and VT service provider act.....	444
XVII.	Token and VT service provider regulation .....	471
XVIII.	Fiduciary Act.....	475
XIX.	UN Sales Convention.....	518
XX.	Act against Unfair Competition .....	548
XXI.	Civil Law Mediation Act .....	566
XXII.	Due Diligence Act (DDA) .....	576
XXIII.	Due Diligence Ordinance (DDA).....	636





## I. German General Commercial Code

from 16 March 1861

Announcement of October 21, 1997

Based on Art. 1 and 10 para. 1 of the Publication Act of 17 April 1985, LGBl. 1985 No. 41, the following shall be published in the Annex to this Act

German General Commercial Code of March 16, 1861,

enacted by the Law of 16 September 1865 concerning the introduction of the General German Commercial Code in the Principality of Liechtenstein, LGBl. 1865 No. 10, promulgated.

General provisions Art. 1

In commercial matters, insofar as this Code does not contain any provisions, the commercial customs and, in their absence, the general civil law shall apply.

Art. 2 Repealed

Art. 3

Where this Code speaks of the commercial court, in the absence of a special commercial court, the ordinary court shall take its place.

Book 1

From the state of

trade Art. 4 to

40 Revoked

5. title

From the authorized signatories and agents Art. 41

to 46

Repealed

Art. 47

1) If a principal appoints someone without granting procuration, whether for the operation of his entire business or for a certain type of business or for individual transactions, in his business (procurator), the procuration shall extend to all transactions and legal acts which the operation of such a business or the execution of such a business requires.

of such transactions usually entails; this also includes the conclusion of arbitration agreements.

2) However, the authorized representative is only authorized to enter into obligations under bills of exchange, to take out loans and to conduct legal proceedings if such authorization has been specifically granted to him.

3) For the rest, he shall not require the special power of attorney prescribed by the laws of the state for the transactions to which his power of attorney extends.

Art. 48

When signing, the authorized representative must refrain from any addition indicating procuration; he must sign with an addition expressing the power of attorney relationship.

Art. 49

The provisions of the two preceding articles shall also apply to agents whom their principal uses as traveling salesmen for business in foreign places. In particular, they shall be deemed to be authorized to collect the purchase price from the sales they have concluded or to grant payment periods for them.

Art. 50

Anyone who is employed in a store or in an open magazine or warehouse shall be deemed to be authorized to make and receive sales there, which usually take place in such a store, magazine or warehouse.

Art. 51

Therefore, the person who delivers the goods and an unacknowledged invoice is not yet considered authorized to receive payment.

Art. 52

1) The legal transaction concluded by a procurator or an authorized representative on behalf of the principal in accordance with the procuration or power of attorney shall entitle and obligate the latter vis-à-vis the third party.

2) It does not matter whether the transaction was expressly concluded in the name of the principal or whether the circumstances show that it was intended by the counterparties to be concluded for the principal.

3) The transaction does not create any rights or liabilities between the authorized signatory or agent and the third party.

Art. 53

German General Commercial Code

---

The authorized signatory or the authorized agent cannot transfer his procuration or power of attorney to another person without the consent of the principal.

## Art. 54

- 1) The procuration or power of attorney is revocable at any time, without prejudice to the rights arising from the existing employment relationship.
- 2) The death of the principal does not result in the expiration of the procuration or power of attorney.

## Art. 55

- 1) A person who enters into a commercial transaction as a procurator or as an authorized agent without having received procuration or power of attorney, and likewise an authorized agent who exceeds his power of attorney when entering into a transaction, is personally liable to the third party under commercial law; the third party may, at his option, sue him for damages or performance.
- 2) This liability does not arise if the third party, notwithstanding the fact that he knew of the lack of procuration or power of attorney or the exceeding of the latter.

## Art. 56

- 1) An authorized signatory or an agent appointed to operate an entire commercial enterprise may not engage in commercial transactions either for his own account or for the account of a third party without the consent of the principal.
- 2) The principal's consent is to be assumed if, at the time the procuration or power of attorney was granted, the principal was aware that the procurator or authorized representative was conducting commercial business for his own account or for the account of a third party, and he did not stipulate that this business be discontinued.
- 3) If the procurator or authorized representative violates this provision, the principal may claim compensation for the damage caused. At the request of the principal, the procurator or authorized agent must also accept that transactions made for his account are deemed to have been concluded for the account of the principal.

6th title

From the agents Art. 57

The nature of the services and the entitlements of the servants (servants, apprentices) to salary and maintenance shall, in the absence of an agreement, be determined by local custom or by the discretion of the court, if necessary after obtaining the opinion of experts.

Art. 58

- 1) An assistant is not authorized to carry out legal transactions in the name and for the account of the principal.
- 2) If, however, he is commissioned by the principal to carry out legal transactions in the principal's business, the provisions on proxies shall apply.

Art. 59

- 1) An agent may not engage in commercial transactions for his own account or for the account of a third party without the consent of the principal.
- 2) In this respect, the provisions applicable to the authorized signatory and the authorized representative (Art. 56) shall apply.

Art. 60

An assistant who is temporarily prevented from performing his duties through no fault of his own shall not thereby lose his entitlement to salary and maintenance. However, he shall be entitled to this benefit only for a period of six weeks.

Art. 61

- 1) The employment relationship between the principal and the servant may be terminated by either party at the end of any calendar quarter after six weeks' prior notice. If a shorter or longer period of time or a shorter or longer notice period is stipulated in the contract, this shall be the end of the matter.
- 2) In the case of commercial apprentices, the duration of the apprenticeship period shall be determined in accordance with the apprenticeship contract and, in the absence of contractual provisions, in accordance with local ordinances or local practice.

Art. 62

- 1) Termination of employment before the specified time (Art. 61) may be requested by either party for good cause.
- 2) The assessment of the importance of the reasons is left to the discretion of the judge.

---

 German General Commercial Code
 

---

## Art. 63

In particular, the termination of the employment relationship may be pronounced against the principal if he does not pay the salary or the due maintenance, or if he is guilty of physical abuse or serious defamation against the assistant.

## Art. 64

In particular, the termination of the employment relationship may be pronounced against the assistant:

1. if the same is unfaithful in service or abuses the trust;
2. if the same, without the consent of the principal, for his own account or for makes commercial transactions for the account of a third party;
3. if he refuses to perform his services or is unavailable for a period of time which is considerable under the circumstances, without a legitimate reason for impediment.  
terleaves;
4. if he is prevented from performing his duties by prolonged illness or sickness or by prolonged imprisonment or absence.  
is hindered;
5. if the same person is guilty of physical abuse or serious defamation.  
against the principal;
6. if the same is given to an immoral way of life. Art. 65

With regard to the persons who perform servants' work in the commercial enterprise, the provisions applicable to servants' work shall apply.

## 7. Title

## Of the Merchants or Sensals Art. 66

- 1) Trade brokers (Sensale) are officially appointed intermediaries for trade transactions.
- 2) Before taking office, they shall take an oath that they will faithfully perform the duties incumbent upon them.

## Art. 67

1) Commercial brokers act as agents for their clients in the purchase and sale of goods, ships, bills of exchange, domestic and foreign government securities, shares and other commercial papers, as well as contracts for insurance, grounding, chartering and renting of ships, as well as for land and water transports and other items relating to trade.

2) The commercial broker shall not be deemed to be authorized to receive payment or any other performance under the contract by virtue of the brokerage transferred.

Art. 68

Commercial brokers are employed either generally for all types of brokering transactions or only for individual types of transactions.

Art. 69

Trade brokers have the following duties in particular:

1. they may not engage in commercial transactions for their own account, either directly or indirectly, even as commission agents, nor commit themselves or provide guarantees, all this without prejudice to the validity of the transactions;

2. they must not be in the relationship of an authorized signatory, agent or assistant to any merchant;

3. they may not combine with other commercial brokers in a joint operation of the brokering business or a part thereof; they are authorized to jointly broker individual transactions with the consent of the principals;

4. they must personally carry out the activities of the mäkler and may not use an assistant to complete the business;

5. they are bound to secrecy about the orders, negotiations and conclusions, unless the opposite is authorized by the parties or required by the nature of the business;

6. they may not accept the consent of the parties or their agents to any transaction other than by express and personal declaration; the mäklers are not permitted to accept orders from absent persons, nor to use a negotiator to mediate.

Art. 70

Merchants who engage in shipbroking may be permitted to assist the skippers in collecting and advancing freight and expenses as accountants or in other ways customary in the locality.

---

German General Commercial Code

---

Art. 71

- 1) In addition to his handbook, the merchant must keep a diary in which all completed transactions are to be entered daily. He has to sign the entered data on a daily basis.
- 2) Before use, the diary must be marked sheet by sheet with consecutive numbers and submitted to the superior authority for certification of the number of sheets.

Art. 72

- 1) The entries in the diary must contain the names of the counterparties, the time of the transaction, the name of the object and the terms of the transaction, in particular, in the case of sales of goods, the type and quantity of the same, as well as the price and time of delivery.
- 2) The entries must be made in German or, if the business language of the place is another, in that language; they must be made in order of the date and without empty spaces.
- 3) The provisions on the establishment of commercial books (Art. 32) shall also apply to the merchant's diary.

Art. 73

- 1) The commercial broker shall, without delay after the conclusion of the transaction, deliver to each party a contract note signed by him and containing the facts specified in the preceding article as the subject matter of the registration.
- 2) In the case of transactions which are not to be performed immediately, the contract note shall be delivered to the parties for their signature and each party shall be sent the copy unsigned by the other party.
- 3) If one party refuses to accept or sign the contract note, the merchant must notify the other party without delay.

Art. 74

The broker is obliged to provide the parties at any time upon request with certified excerpts from the diary, which must contain everything that has been entered by the broker with regard to the transaction concerning the parties.

Art. 75

When a merchant marshal dies or retires from office, his diary shall be deposited with the authorities.

Art. 76

- 1) The conclusion of a contract brokered by a broker is independent of the entry of the contract in the diary or the delivery of the contract notes.
- 2) These facts serve only as evidence of the concluded contract.

Art. 77

- 1) The properly kept diary as well as the contract notes of a merchant usually provide proof of the conclusion of the transaction and its contents.
- 2) However, the judge shall decide at his discretion, guided by the consideration of all the circumstances, whether to attach less weight to the contents of the diary and the contract notes, whether to require the sworn corroboration by the broker or other evidence, whether in particular the refusal of a party to accept or sign the contract note is of relevance for the assessment of the case.

Art. 78

The diary of a merchant marauder, in the keeping of which irregularities have occurred, may be taken into account as evidence only to the extent that it appears to be suitable according to the nature and significance of the irregularities and the situation of the case.

Art. 79

- 1) In the course of litigation, the judge may order the production of the diary, even without the request of a party, in order to inspect it and compare it with the final score, extracts and other evidence.
- 2) The provision of Art. 39 shall also apply with regard to the submission of the diary.

Art. 80

Unless the parties have waived this requirement or the local practice exempts him from it with regard to the type of goods, the broker shall, after having taken a sample of each good sold through his intermediary for the purpose of recognizing the same, take a copy of the sample.

until the goods have been accepted without objection to their condition or the transaction has been settled in another way.

Art. 81



---

German General Commercial Code

---

Any fault on the part of the merchant leader shall entitle the damaged party to claim indemnification from him.

Art. 82

- 1) The merchant shall demand the merchant's fee (sensarium) as soon as the transaction has been concluded and, if it was conditional, has become unconditional and his obligation to deliver the contract notes has been fulfilled, without prejudice to other provisions by local ordinances or by local custom.
- 2) If the transaction has not been concluded or has not become unconditional, no brokerage fee may be demanded for the negotiations.
- 3) The amount of the marketer's fee shall be regulated by local ordinances; in the absence thereof, local custom shall decide.

Art. 83

If there is no agreement between the parties as to who is to pay the brokerage fee, in the absence of local ordinances or local custom, the same shall be paid by each party in equal shares.

Art. 84

- 1) It shall be left to the laws of the provinces to determine what is necessary concerning the employment of merchants and the punishment of breaches of duty committed by them in their profession.
- 2) The laws of the Länder shall reserve the right to supplement the provisions of this title in accordance with local needs; in particular, the exclusive right to broker commercial transactions may be granted to commercial brokers.
- 3) Also, the provincial laws or local ordinances may extend or limit the scope of official functions and powers (Arts. 67, 70) assigned to merchant marshals in this title or the scope of their duties (Art. 69).

Art. 85

*Non-officially appointed leader*

- 1) The above provisions on commercial brokers shall apply mutatis mutandis to unofficially appointed brokers who are commissioned to demonstrate the opportunity to conclude a contract or to broker the conclusion of a contract in return for a fee.

2) The provisions of Art. 69 paras. 1 to 4 and 6 sentence 2 as well as Art. 71 para. 2 and Art. 75 shall not apply irrespective of the general provisions on accounting. Art. 70, 71 par. 1, Art. 72 to 74 and Art. 76 to 80 shall apply only to professional brokers.

3) The diary pursuant to Art. 71 may also be kept in digital form.

4) Insofar as the broker has been assured compensation for expenses in the contract, he may also demand this compensation in deviation from Art. 82 Para. 2 if the transaction does not take place.

5) If the broker has worked for the other party in a way that is contrary to the contract, or if he has allowed himself to be promised wages by the latter in a case where this is contrary to good faith, he may not claim wages or reimbursement of expenses from his principal.

#### Art. 86

##### *Special provisions for insurance brokers*

Insurance brokers shall disclose to persons seeking insurance or reinsurance coverage any direct legal or economic links they may have with an insurance undertaking or their holdings in such undertakings, or vice versa, to the extent that such links could affect a completely free choice of insurance undertaking.

8. title sales representative

#### Art. 87

##### *Term*

1) A commercial agent is a person who, as an independent businessman, is permanently entrusted with the task of brokering business for another businessman (entrepreneur) or concluding business on his behalf. A self-employed person is one who is essentially free to organize his activities and determine his working hours.

2) Any person who, without being self-employed within the meaning of paragraph 1, is permanently entrusted with brokering transactions for an entrepreneur or concluding transactions on the entrepreneur's behalf shall be deemed to be an employee.

3) The entrepreneur may also be a commercial agent.

#### Art. 88

##### *Contract document*

---

German General Commercial Code

---

Either party may demand that the content of the contract and subsequent agreements relating to the contract be recorded in a document signed by the other party. This claim cannot be excluded.

Art. 89

*Duties of the commercial agent*

- 1) The commercial agent shall endeavor to mediate or conclude transactions; in doing so, he shall safeguard the interest of the principal.
- 2) He has to give the entrepreneur the necessary information, namely to inform him immediately about every business mediation and every business transaction.
- 3) He shall perform his duties with the diligence of a prudent businessman and follow the reasonable instructions given by the Contractor.
- 4) Agreements deviating from paras. 1 and 2 shall be invalid.

Art. 90

*Duties of the entrepreneur*

- 1) The principal shall provide the commercial agent with the documents necessary for the performance of his activities, such as samples, drawings, price lists, advertising brochures, terms and conditions.
- 2) The entrepreneur shall provide the commercial agent with the necessary notifications. He must inform him without delay of the acceptance or rejection of a transaction brokered by the commercial agent or concluded without his power of representation and of the non-execution of a transaction brokered or concluded by him. He must inform him without delay if he can or intends to conclude transactions only to a considerably lesser extent than the commercial agent could expect under normal circumstances.
- 3) Agreements deviating from paras. 1 and 2 shall be invalid.

Art. 91

*Del credere commission*

- 1) If a commercial agent undertakes to guarantee the fulfillment of the liability arising from a transaction, he may claim a special remuneration (del credere provision); the claim cannot be excluded in advance. The obligation can only apply to a specific transaction or to transactions with

third parties which the commercial agent brokers or concludes. The takeover must be in writing.

2) The claim to the del credere commission arises with the conclusion of the transaction.

3) Paragraph 1 shall not apply if the principal or the third party has his place of business or, in the absence of such, his place of residence abroad. Furthermore, it shall not apply to transactions which the commercial agent is authorized to conclude and execute without limitation.

#### Art. 92

##### *Transactions subject to commission*

1) The commercial agent shall be entitled to commission for all transactions concluded during the contractual relationship which are attributable to his activities or are concluded with third parties which he has acted upon as a

has recruited customers for business of the same type. He shall not be entitled to commission if and to the extent that the commission pursuant to subsection 3 is due to the excluded commercial agent.

2) If the commercial agent has been assigned a certain district or a certain group of customers, he shall also be entitled to commission for transactions concluded without his involvement with persons in his district or group of customers during the contractual relationship. This shall not apply if and to the extent that the commission pursuant to subsection 3 is due to the commercial agent who has left the agency.

3) For a transaction concluded only after the termination of the contractual relationship, the commercial agent shall be entitled to commission only if

1. he has brokered the transaction or has initiated it and prepared it in such a way that the conclusion is predominantly attributable to his activity and the transaction has been concluded within a reasonable period of time after the termination of the contractual relationship; or

2. prior to the termination of the contractual relationship, the commercial agent or the principal has received the offer of the third party to conclude a transaction for which the commercial agent is entitled to commission pursuant to subsection 1 sentence 1 or subsection 2 sentence 1.

The claim to commission according to clause 1 shall be due to the subsequent commercial agent on a pro rata basis if, due to special circumstances, a division of the commission is equitable.

---

German General Commercial Code

---

4) In addition to the entitlement to commission for concluded transactions, the commercial agent is entitled to a collection commission for the amounts collected by him in accordance with the order.

Art. 93

*Maturity of the commission*

1) The commercial agent is entitled to commission as soon as and to the extent that the principal has executed the transaction. A different agreement can be made, but the commercial agent is entitled to an appropriate advance payment, which is due at the latest on the last day of the following month, upon the execution of the transaction by the principal. Irrespective of any agreement, however, the commercial agent is entitled to commission as soon as and insofar as the third party has executed the transaction.

2) If it is certain that the third party will not perform, the claim to commission shall lapse. Amounts already received shall be returned.

3) The commercial agent shall also be entitled to commission if it is established that the principal does not execute the transaction in whole or in part or does not execute it in the manner in which it was concluded. The claim shall lapse in the event of non-execution if and insofar as this is due to circumstances for which the principal is not responsible.

4) The entitlement to commission shall become due on the last day of the month in which the entitlement is to be settled in accordance with Art. 95 par. 1.

5) Agreements deviating from subsection 2 sentence 1, subsections 3 and 4 which are detrimental to the commercial agent shall be invalid.

Art. 94

*Amount of commission*

1) If the amount of the commission is not determined, the usual rate shall be deemed agreed.

2) The commission shall be calculated from the remuneration to be paid by the third party or the contractor. Discounts for cash payment shall not be deducted; the same shall apply to ancillary costs, namely freight, packaging, customs, taxes, unless the ancillary costs are specifically invoiced to the third party. Value-added tax, which is only shown separately in the invoice on the basis of tax regulations, shall not be deemed to be specially invoiced.

3) In the case of contracts for use and enjoyment of a definite duration, the commission shall be calculated from the remuneration for the duration of the contract. In the case of indefinite

duration, the commission shall be calculated from the remuneration up to the point in time at which the third party can terminate the contract for the first time; the commercial agent shall be entitled to further commissions calculated accordingly if the contract continues to exist.

Art. 95

*Settlement through the commission*

- 1) The entrepreneur shall settle the commission to which the commercial agent is entitled on a monthly basis; the settlement period may be extended to a maximum of three months. The settlement must be made without delay, at the latest by the end of the next month.
- 2) When settling accounts, the commercial agent may request a statement of all transactions for which he is entitled to commission under Art. 92.
- 3) The commercial agent may also request notification of all circumstances that are material to the commission claim, its due date and its calculation.
- 4) If the statement of account is refused or if there are reasonable doubts as to the correctness or completeness of the statement of account or the statement of account, the commercial agent may demand that, at the discretion of the principal, either he or an auditor or sworn accountant to be appointed by him be granted access to the books of account or other documents to the extent necessary to establish the correctness or completeness of the statement of account or the statement of account.
- 5) These rights of the commercial agent cannot be excluded or limited.

Art. 96

*Reimbursement of expenses*

The commercial agent may only claim reimbursement of expenses incurred in the regular course of business if this is customary in the trade.

Art. 97

*Limitation of claims*

Claims arising from the contractual relationship shall become statute-barred after five years, commencing at the end of the year in which they became due.

Art. 98

*Retention right*

---

German General Commercial Code

---

- 1) The commercial agent cannot waive statutory retention rights in advance.
- 2) After the termination of the contractual relationship, the commercial agent has a right of retention to documents made available to him in accordance with general regulations (Art. 90 par. 1) only in respect of his due claims for provision and reimbursement of expenses.

Art. 99

*Termination of the contract*

- 1) If the contractual relationship has been entered into for an indefinite period, it may be terminated with one month's notice in the first year of the contractual term, with two months' notice in the second year, and with three months' notice from the third year. Termination is only permitted at the end of a calendar month, unless otherwise agreed.
- 2) The notice periods pursuant to subsection 1 may be extended by agreement; the period may not be shorter for the principal than for the commercial agent. If a shorter period is agreed for the entrepreneur, the period agreed for the commercial agent shall apply.
- 3) A contractual relationship entered into for a fixed period of time which is continued by both parties after expiry of the agreed term shall be deemed to have been extended for an indefinite period. The total duration of the contractual relationship shall be decisive for the determination of the notice periods pursuant to para. 1.

Art. 100

*Termination without notice*

- 1) The contractual relationship may be terminated by either party for good cause without notice.
- 2) If the termination is caused by conduct for which the other party is responsible, the other party shall be obliged to compensate the damage caused by the termination of the relationship.

Art. 101

*Compensation claim*

- 1) The commercial agent may demand reasonable compensation from the principal after termination of the contractual relationship if:
  1. the entrepreneur from the business relationship with new customers, which the Han-

The Company is entitled to substantial benefits even after termination of the contractual relationship if the Company has recruited an agent;

2. as a result of the termination of the contractual relationship, the commercial agent loses entitlement to commission which would have been due if the contractual relationship had continued.

already concluded or to be concluded in the future with the customers recruited by him; and

3. the payment of compensation is equitable, taking into account all the circumstances.

It is equivalent to the advertising of a new customer if the commercial agent has so substantially expanded the business relationship with a new customer that this is economically equivalent to the advertising of a new customer.

2) The compensation shall amount to a maximum of one annual commission or other annual remuneration calculated according to the average of the last five years of the commercial agent's activity; in case of a shorter duration of the contractual relationship, the average during the period of activity shall be decisive.

3) The claim does not exist if:

1. the commercial agent has terminated the contractual relationship, unless conduct on the part of the principal has given reasonable cause to do so or the commercial agent cannot reasonably be expected to continue his activity on account of his age or illness; or

2. the entrepreneur has terminated the contractual relationship and there was good cause for the termination due to culpable conduct on the part of the commercial agent; or

3. a third party enters into the contractual relationship in place of the commercial agent on the basis of an agreement between the entrepreneur and the commercial agent; the agreement cannot be made before the termination of the contractual relationship.

4) The claim cannot be excluded in advance. It must be asserted within one year of termination of the contractual relationship.

5) Paragraphs 1, 3 and 4 shall apply to insurance agents with the proviso that the business relationship with new customers acquired by the commercial agent shall be replaced by the brokerage of new insurance contracts by the insurance agent, and the brokerage of an insurance contract shall be deemed equivalent if the insurance agent has so substantially extended an existing insurance contract that this is economically equivalent to the brokerage of a new insurance contract.



---

German General Commercial Code

---

contract. The insurance agent's compensation shall not exceed three annual commissions or annual remunerations, in derogation of paragraph 2.

Art. 102

*Business and trade secrets*

The commercial agent may not exploit or disclose to others any business or trade secrets which have been entrusted to him or which have become known to him as such through his work for the principal, even after termination of the contractual relationship.

Art. 103

*Non-competition*

1) An agreement which restricts the commercial agent in his commercial activity after termination of the contractual relationship (non-competition clause) must be in writing and a document containing the agreed provisions and signed by the principal must be handed over to the commercial agent. The agreement may only be made for a maximum of two years from the termination of the contractual relationship; it may only extend to the territory or clientele assigned to the commercial agent and only to the matters in respect of which the commercial agent is to endeavor to arrange or conclude business for the principal. The principal is obliged to pay the commercial agent an appropriate compensation for the duration of the non-competition clause.

2) The entrepreneur may waive the non-competition clause in writing until the end of the contractual relationship with the effect that he shall be released from the obligation to pay the compensation upon the expiry of six months from the declaration.

3) If one party terminates the contractual relationship for good cause due to the other party's culpable conduct, it may withdraw from the non-competition clause by means of a written declaration within one month of the termination.

4) Agreements to the detriment of the commercial agent cannot be made.

Art. 104

*Powers of attorney of the commercial agent*

1) The power of attorney granted to commercial agents to conclude transactions does not authorize them to amend concluded contracts, in particular to grant payment periods.

2) Commercial agents are only entitled to accept payments if they are authorized to do so.

3) A commercial agent, even if he has not been granted a power of attorney to conclude transactions, shall be deemed to be authorized to accept the notification of defects of goods, the declaration that goods will be made available, as well as similar declarations by which a third party asserts or reserves his rights arising from defective performance; he may assert the rights of the entrepreneur to secure evidence. A third party need only accept a restriction of these rights if he knew or should have known about it.

Art. 105

*Lack of power of representation*

1) If a commercial agent who is only entrusted with the brokerage of transactions has concluded a transaction on behalf of the principal and if the third party was not aware of the lack of power of representation, the transaction shall be deemed to have been approved by the principal if the principal does not reject the transaction vis-à-vis the third party without undue delay after having been informed by the commercial agent or the third party of the conclusion and essential content thereof.

2) The same shall apply if a commercial agent who is entrusted with the conclusion of transactions has concluded a transaction on behalf of the entrepreneur for which he is not authorized to conclude.

Art. 106

*Insurance agent*

1) An insurance agent is a person who, as a commercial agent, is entrusted with brokering or concluding insurance contracts.

2) Subject to paras. 3 and 4, the contractual relationship between the insurance agent and the insurer shall be governed by the provisions applicable to the contractual relationship between the commercial agent and the entrepreneur.

3) Notwithstanding the first sentence of Art. 91(1), an insurance agent shall be entitled to commission only for transactions attributable to his activities. Art. 91 par. 2 does not apply to insurance agents.

4) The insurance agent is entitled to commission (Art. 92 par. 1) as soon as the policyholder has paid the premium from which the commission is calculated according to the contractual relationship.

Art. 107

---

 German General Commercial Code
 

---

*Minimum working conditions*

- 1) For the contractual relationship of a commercial agent who is contractually not allowed to work for other entrepreneurs or who is unable to do so due to the nature and scope of the activity required of him, the Government may, by decree, set the lower limit of the entrepreneur's contractual benefits in order to ensure the necessary social and economic needs of such commercial agents or a certain group of them. The stipulated services may not be excluded or limited by contract.
- 2) Par. 1 shall also apply to the contractual relationship of an insurance agent who, on the basis of one or more contracts, is entrusted with brokering or concluding transactions for several insurers belonging to one insurance group or to an organizational association existing between them, provided that the termination of the contractual relationship with one of these insurers would, in case of doubt, also result in the termination of the contractual relationship with the other insurers. In this case, it may also be determined by decree whether the determined benefits are owed by all insurers as joint and several debtors or proportionately or only by one of the insurers and how the compensation is to be paid among them.

## Art. 108

*Commercial agent as a sideline*

1) Articles 99 and 101 do not apply to a commercial agent in a secondary profession. If the contractual relationship has been entered into for an indefinite period, it may be terminated with one month's notice to the end of a calendar year.

If a different period of notice is agreed, it must be the same for both parties. The right to an appropriate advance payment pursuant to Art. 93 Par. 1 Sentence 2 may be excluded.

2) Paragraph 1 may only be invoked by the principal who has expressly entrusted the commercial agent with the brokerage or conclusion of transactions as a commercial agent in a secondary profession.

3) Whether a commercial agent is only active as a commercial agent in a secondary profession is determined by the perception of the market.

4) The provisions of paras. 1 to 3 apply *mutatis mutandis* to insurance agents.

## Art. 109

*Foreign commercial agents; shipping agents*

1) If the commercial agent has performed his activity for the entrepreneur according to the contract

not to be exercised within the territory of the Contracting States to the Agreement on the European Economic Area or Switzerland, it may be agreed otherwise with regard to Articles 87 to 108.

2) The same applies if the commercial agent is entrusted with the brokerage or conclusion of transactions involving the chartering, handling or equipping of ships or the booking of passages on ships.

3) In all other respects, the provisions of the Law on International Private Law shall apply.

Art. 110 to 270 Discontinued

4th book

From the trade

1. Title

From the commercial transactions in the general

1. Section

concept of commercial transactions

Commercial transactions are:

## Art. 271

1. the purchase or other acquisition of goods or other movable property, government securities, shares or other securities intended for trading, with a view to their resale; it makes no difference whether the goods or other movable property are to be resold in the natural state or after treatment or processing;
2. the takeover of a delivery of items of the kind referred to in item 1, which the transferee acquires for this purpose;
3. the assumption of insurance against premium;
4. the assumption of the carriage of goods or travelers by sea and the loan against verbodmung.

## Art. 272

1) The following transactions are also commercial transactions if they are conducted on a commercial basis:

1. taking over the processing or working of movable property for others, if the transferee's trade exceeds the scope of the trade;
2. the banker or money changer business;
3. the business of the commission agent (Art. 360), the freight forwarder and the carrier, as well as the business of establishments intended for the transportation of persons;
4. brokering or concluding commercial transactions for other persons; however, this does not include the official business of commercial brokers;
5. the publishing business, as well as other business of the book or art trade; furthermore, the business of printing works, unless their operation is merely a craft.

2) The designated transactions are also commercial transactions if they are made individually, but by a merchant in the course of his commercial business, which is usually directed at other transactions.

## Art. 273

1) All individual transactions of a merchant which are part of the operation of his trade are to be regarded as commercial transactions.

2) This applies in particular to the commercial resale of goods, movable property and securities acquired for this purpose, as well as to the

Acquisition of equipment, materials and other movable property to be used or consumed directly in the operation of the trade.

3) The resales made by craftsmen, insofar as they are made only in the exercise of their trade, are not to be considered as commercial transactions.

Art. 274

1) Contracts concluded by a merchant shall, in case of doubt, be deemed to belong to the operation of the trade.

2) The promissory bills subscribed by a merchant shall be deemed to have been subscribed in the course of the merchant's business, unless the contrary results from the same.

Art. 275

Repealed Art.

276

The capacity or validity of a commercial transaction shall not be excluded by the fact that a person is prohibited from trading or concluding commercial transactions because of his office or status, or for reasons of commercial law or other similar reasons.

Art. 277

In any legal transaction which is a commercial transaction on the part of one of the counterparties, the provisions of this fourth book shall be applied equally in relation to both counterparties, unless it follows from these provisions themselves that their special provisions apply only to the one of the two counterparties on whose part the transaction is a commercial transaction.

2. Section

General provisions on commercial transactions

Art. 278

In judging and interpreting commercial transactions, the judge must inquire into the intentions of the contracting parties and not adhere to the literal meaning of the expression.

Art. 279

With regard to the meaning and effect of acts and omissions, the customs and practices applicable in commercial transactions must be taken into account.

---

German General Commercial Code

---

Art. 280

If two or more persons have jointly entered into an obligation towards another in a transaction which is a commercial transaction on their part, they shall be deemed to be joint and several debtors, unless the contrary results from the agreement with the creditor.

Art. 281

1) In commercial transactions, and likewise in all cases in which a joint and several obligation is imposed in this Code, a joint and several debtor shall not be entitled to the plea of division or anticipatory action.

2) The same applies to guarantors if the debt arises from a commercial transaction on the part of the principal debtor, or if the guarantee itself is a commercial transaction.

A person who is obliged to exercise due care in a transaction which is a commercial transaction on his part must exercise the care of a prudent businessman.

Art. 283

Those who are entitled to claim damages may demand reimbursement of the actual damage and lost profit.

Art. 284

1) The contractual penalty is not subject to any limitation as to the amount; it may exceed twice the interest.

2) In case of doubt, the debtor shall not be entitled to exempt himself from performance by paying the conventional penalty.

3) In case of doubt, the agreement on a contractual penalty does not exclude the right to claim damages exceeding the amount of the same.

Art. 285

1) The charge (arrha) shall be deemed to be a penalty only if it has been agreed or is customary in the locality.

2) It must be returned or credited unless otherwise agreed or in accordance with local custom.

Art. 286

Due to excessive violation, in particular violation over half, commercial transactions can not be challenged.

Art. 287

Repealed Art.

288

Repealed Art.

289

Repealed Art.

290

1) A merchant who arranges transactions or renders services to a merchant or non-merchant in the course of his trade may demand commission for this even without prior agreement and, if it is a matter of storage, may also demand storage fees at the same time according to the rates customary in the place.

2) He may charge interest on his loans, advances, expenses and other uses from the date they were made or obtained.

3) This applies in particular also from the commission agent and forwarder.

Art. 291

1) If a merchant is in a current account with another merchant, the merchant who is entitled to a surplus at the closing of accounts shall be entitled to claim interest on the entire amount of the surplus, even if this includes interest, from the date of the closing of accounts.

2) The closing of accounts is done once a year, unless otherwise determined by the parties.

Art. 292

Repealed Art.

293

In the case of commercial transactions, the total amount of interest may exceed the principal.

Art. 294

The acceptance of an invoice does not preclude the proof of an error or a fraud in the invoice.

Art. 295

The probative value of a promissory bill or a receipt is not bound to the expiry of a time limit.



German General Commercial Code

---

The bearer of a receipt shall be deemed to be authorized to receive the payment unless the circumstances known to the payer prevent the acceptance of such authorization.

## Art. 297

An application, order or power of attorney issued by a merchant in the course of business shall not be revoked by his death unless a contrary intention appears from his declaration or from the circumstances.

## Art. 298

1) In the case of a power of attorney for commercial transactions, the same provisions apply with regard to the relationship between the principal, the attorney and the third party with whom the attorney concludes the transaction on behalf of the principal as are given in Art. 52 with regard to procurists and authorized agents.

2) Similarly, the provision of Art. 55 applies to a person who concludes a commercial transaction as an authorized representative without having received power of attorney to do so, or who exceeds his power of attorney when concluding the commercial transaction.

## Art. 299

In the event of assignment of a claim arising from a commercial transaction, payment of its full amount may be demanded even if this amount exceeds the sum of the price agreed for the assignment.

## Art. 300 to 305 Deleted

1) Retrieved

2) Retrieved

Art. 306

3) The statutory lien of the commission agent, freight forwarder and carrier is equivalent to a lien acquired by contract.

4) Retrieved

Art. 307 to 316 Deleted

3. Section Conclusion of commercial transactions

Art. 317

1) In commercial transactions, the validity of contracts is not conditioned by written form or other formalities.

2) Exceptions to this rule shall take place only to the extent that they are contained in this Code.

Art. 318

An application for the conclusion of a commercial transaction must be made immediately, otherwise the applicant is no longer bound by his application.

Art. 319

1) In the case of an application made in absentia, the applicant shall remain bound until the time at which he may expect receipt of the reply if it is sent in due time. In calculating this time, the applicant may assume that his application has arrived in time.

2) If the acceptance sent in time arrives only after this point of time, the contract does not exist if the applicant has given notice of his withdrawal in the meantime or without delay after the arrival of the acceptance.

Art. 320

1) If the revocation of an application is received by the other party earlier than the application or at the same time as the application, the application shall be deemed not to have been made.

2) Likewise, acceptance shall be deemed not to have taken place if the revocation is received by the applicant before the declaration of acceptance or at the same time as the same.

Art. 321

If a contract negotiated in absentia has come into existence, the

---

## German General Commercial Code

---

The date on which the declaration of acceptance is made for the purpose of dispatch shall be deemed to be the date on which the contract is concluded.

### Art. 322

Acceptance subject to conditions or restrictions shall be deemed a rejection of the application coupled with a new application.

### Art. 323

1) If a business relationship exists between the merchant to whom an order is given and the principal, or if the latter has offered to execute such orders, he shall be obliged to reply without hesitation, failing which his silence shall be deemed to be acceptance of the order.

2) Even if the same refuses the order, he shall be obliged to protect the goods or other objects possibly sent with the order from damage for the time being at the expense of the principal, as far as he is covered for these costs and as far as it can be done without his disadvantage.

3) The Commercial Court may, at its request, order that the property be deposited in a public warehouse or with a third party until the owner makes other arrangements.

## 4. Section Fulfillment of Commercial Transactions

### Art. 324

1) The performance of the commercial transaction must take place at the place which is determined in the contract or which is to be regarded as the place of performance according to the nature of the transaction or the intention of the parties to the contract.

2) If these conditions are not met, the obligor shall perform at the place where he had his place of business or, in the absence thereof, his place of residence at the time the contract was concluded. If

However, if a certain thing is to be handed over which was located at another place with the knowledge of the opposing parties at the time of the conclusion of the contract, the handover shall take place at this place.

### Art. 325

1) In the case of monetary payments, with the exception of the payment of endorsable or bearer instruments, the debtor is obliged, unless the contract or the nature of the transaction or the intention of the counterparties indicate otherwise, to deliver the payment to the creditor, at his risk and expense, at the place where the latter was at the time the claim arose.

had its commercial establishment or, in the absence thereof, its place of residence.

2) However, this provision does not change the legal place of performance of the debtor (Art. 324) with regard to the place of jurisdiction or in any other respect.

Art. 326

If the time of performance of an obligation is not specified in the contract, performance may be demanded and effected at any time, unless circumstances or commercial practice indicate otherwise.

Art. 327

1) If the time of performance is spring or autumn or similar time provisions, the commercial usage of the place of performance shall decide.

2) If performance has been set for the middle of a month, the 15th of that month shall be considered the day of performance.

Art. 328

1) If the fulfillment of a liability is to take place with the expiration of a certain period after the conclusion of the contract, the time of fulfillment falls:

1. if the term is determined in days, on the last day of the term; the day on which the contract is concluded shall not be included in the calculation of the term; if the term is determined in eight or 14 days, it shall be understood as a full eight or 14 days;

2. if the term is determined by weeks, months or a period of several months (year, half year, quarter of a year), on the day of the last week or the last month which corresponds by its designation or number to the day of the conclusion of the contract; if this day is missing in the last month, the performance shall fall on the last day of this month.

2) The term "half a month" shall be considered equal to a period of 15 days. If the time limit for performance is set at one or more whole months and half a month, the 15 days shall be counted last.

3) According to the above principles, the time limit shall also be calculated if the beginning of the same has not been determined according to the day of the conclusion of the contract, but according to another time or event.

Art. 329

If the date of performance falls on a Sunday or a general holiday, then

German General Commercial Code

---

the next working day shall be considered the day of performance.

## Art. 330

- 1) If the fulfillment is to be done within a certain period of time, it must be done before the expiration of the same.
- 2) If the last day of the period falls on a Sunday or general holiday, it must be fulfilled no later than the next preceding working day.

## Art. 331

Amendments to these time calculations (Art. 328 to 330), insofar as they concern the liquidation dates of exchange transactions, shall be reserved for the Exchange Rules.

## Art. 332

The performance must be made and accepted on the day of performance during the ordinary business hours.

## Art. 333

If the contractual period for the performance of an obligation has been extended, the new period shall, in case of doubt, commence on the first day after the expiry of the old period.

## Art. 334

- 1) In all cases where an expiry date has been determined, it shall be assessed according to the nature of the transaction and the intention of the counterparties whether it has been added for the benefit of only one of the two counterparties.
- 2) Even if the debtor is authorized to pay before the maturity date, he is not entitled to withdraw the discount without the creditor's consent, unless he is authorized to do so by agreement or custom.

## Art. 335

If the contract does not specify the nature and quality of the goods, the obligor shall provide merchandise of average kind and quality.

## Art. 336

- 1) The measure, weight, mint, coinage, time and distance applicable at the place where the contract is to be performed shall, in case of doubt, be deemed to be those stipulated in the contract.
- 2) If the type of coin specified in the contract is not in circulation at the place of payment, or if it is only an invoice currency, the amount may be paid in accordance with the value at the expiry time in

the national coin, unless the use of the word "effective" or a similar addition expressly requires payment in the coin denomination specified in the contract.

#### 5. Section Delay in Payment

##### Art. 336a

###### *Scope*

This section applies to legal transactions between entrepreneurs and to legal transactions between an entrepreneur and a legal person under public law.

##### Art. 336b

###### *Default interest*

1) In the event of a delay in the payment of monetary claims, the statutory interest rate shall be eight percentage points above the reference interest rate. The reference interest rate applicable on the first calendar day of a half-year shall be decisive for the respective half-year. However, insofar as the debtor is not responsible for the delay, he shall only be liable to pay the interest specified in Section 1000 (1) of the Austrian Civil Code.

2) The Government shall regulate the details by ordinance, in particular:

- a) the reference interest rate used to determine the statutory interest rate;
- b) the publication of the applicable statutory interest rate.

##### Art. 336c

###### *Duration of acceptance or verification procedures*

The duration of an acceptance or verification procedure provided for by law or contract to determine whether the service has been provided in accordance with the contract may not exceed 30 calendar days from receipt of the goods or provision of the service. The agreement of a longer period may only be made expressly and is only permissible insofar as this is not grossly disadvantageous for the creditor.

##### Art. 336d

###### *Compensation for operating costs*

In the event of a delay in the payment of monetary claims, the creditor is entitled, as compensation for any collection costs, to claim from the

debtor a lump sum of 60 francs. For the reimbursement of collection costs exceeding this lump sum, § 1333 para. 3 ABGB shall apply.

Art. 336e

*Grossly disadvantageous contractual provisions or business practices*

1) A contractual provision concerning the date of payment, the payment period, the interest rate on arrears or the compensation for collection costs is void if it is grossly disadvantageous for the creditor. Likewise, legal effects cannot be derived from a business practice concerning these issues if it is grossly disadvantageous to the creditor.

2) In order to assess the gross disadvantageousness of a contractual provision or business practice, it is necessary to consider in particular the extent to which it deviates from the practice of fair dealing, whether there is an objective reason for this deviation and which contractual performance is involved. In the case of a contractual provision agreed to the detriment of the creditor on an amount of default interest that deviates from Art. 336b or on an amount of lump-sum compensation that deviates from Art. 336d sentence 1, it must also be taken into account whether there is an objective reason for this deviation.

3) The agreement of a payment term of up to 60 days is in no way grossly disadvantageous.

4) In any event, the exclusion of interest on arrears is grossly prejudicial.

5) The exclusion of compensation for debt collection costs under Art. 336d shall be deemed grossly prejudicial unless, exceptionally, it is objectively justified by the circumstances of the relevant legal transaction.

2. Title From purchase

Art. 337

The offer for sale, which is recognizable for several persons, in particular by communication of price lists, stock lists, samples or specimens, or in which the goods, the price or the quantity is not determined, is not a binding application for purchase.

Art. 338

A commercial transaction, the subject of which is the delivery of a quantity of fungible goods for a certain price, shall also be assessed in accordance with the provisions on purchase.

Art. 339

- 1) A purchase on inspection or on trial is concluded under the condition that the buyer will inspect or test the goods and approve them. This condition is, in case of doubt, a condition precedent.
- 2) The buyer is not bound to the purchase before his approval. The seller ceases to be bound if the buyer does not approve by the expiry of the agreed or customary period.
- 3) In the absence of an agreed or customary time limit, the seller may, after the expiry of a period of time reasonable under the circumstances, request the buyer to make a declaration; he shall cease to be bound if the buyer does not immediately respond to the request.
- 4) If the goods sold on inspection or trial have already been handed over for the purpose of inspection or trial, the buyer's silence until after the expiry of the term or upon the request shall be deemed as approval.

Art. 340

A purchase according to a sample or specimen is unconditional, but concluded under the obligation of the seller that the goods are according to the sample or specimen.

Art. 341

A purchase on trial is unconditional purchase with the addition of the motive.

Art. 342

- 1) With regard to the place of performance of the seller's and the buyer's obligations, the provisions of Art. 324 par. 1 shall apply.
- 2) Unless otherwise stipulated in these provisions, the goods shall be delivered at the place where the seller has his place of business at the time of the conclusion of the contract or, if the seller does not have such a place of business, at the place where the seller has his place of business at the time of the conclusion of the contract.

The place of delivery shall be the place where the contract was concluded. However, if a certain thing is sold, which at the time of the conclusion of the contract was in another place with the knowledge of the opposing parties, the transfer shall take place in that place.

- 3) The purchase price shall be paid at the time of delivery, unless otherwise required by the nature of the transaction or determined by contract or custom. In all other respects the provisions of Art. 325 shall also apply in respect of this payment.

Art. 343



- 1) The seller is obliged to store the goods with the care of a prudent businessman as long as the buyer is not in default with the receipt.
- 2) If the buyer is in default with the receipt of the goods, the seller may deposit the goods in a public warehouse or with a third party at the risk and expense of the buyer. He is also entitled, after prior warning, to have the goods sold publicly; if the goods have a stock exchange price or a market price, he may not, after prior warning, effect the sale publicly by a merchant or, in the absence of such, by an official authorized to hold auctions at the current price. If the goods are exposed to spoilage and danger is imminent, the prior threat is not required.
- 3) The seller shall notify the buyer immediately of the execution of the sale, insofar as this is possible; in the event of failure to do so, the seller shall be liable for damages.

#### Art. 344

If the goods are to be sent to the buyer from another place and if the buyer has not determined the type of shipment, the seller shall be deemed to have been instructed to make the determination instead of the buyer with the diligence of a prudent businessman, in particular also to determine the person by whom the transport of the goods is to be arranged or carried out.

#### Art. 345

- 1) After the goods have been handed over to the forwarder or carrier or other person designated to transport the goods, the buyer shall bear the risk to which the goods are subject. However, if the buyer has

If the customer has given special instructions on the type of shipment and the seller has deviated from these instructions without urgent cause, the seller shall be liable for the resulting damage.

- 2) The seller shall bear the risk to which the goods are exposed during transport if, according to the contract, he is to deliver the goods at the place where the transport is to take place, so that this place shall be deemed to be the place of performance for him. The fact that the seller has assumed the payment of costs or expenses of shipment does not in itself mean that the place to which the goods are transported shall be deemed to be the place of performance for the seller.

- 3) The provisions of this Article shall not preclude the risk from being borne by the Purchaser from an earlier date, provided that

this would be the case under civil law.

Art. 346

- 1) The buyer is obliged to receive the goods if they are in conformity with the contract or, in the absence of a special agreement, if they meet the legal requirements (Art. 335).
- 2) Receipt must take place immediately, unless otherwise stipulated or customary or required by the circumstances.

Art. 347

- 1) If the goods have been sent from another place, the buyer shall inspect the goods without delay after delivery, insofar as this is feasible in the ordinary course of business, and if the goods are not found to be in conformity with the contract or the law (Art. 335), he shall notify the seller thereof immediately.
- 2) If he fails to do so, the goods shall be deemed to have been approved, unless they have defects which were not recognizable during the immediate inspection in the ordinary course of business.
- 3) If such defects are discovered later, the notification must be made without delay after the discovery, otherwise the goods shall be deemed approved also with regard to these defects.
- 4) The foregoing provision shall also apply to the sale on survey or sample or after sample, insofar as it concerns defects of the

The goods shall be deemed to have been sent if they were not recognizable during a proper inspection or inspection in accordance with the regulations.

Art. 348

- 1) If the buyer complains about the goods sent from another place, he is obliged to provide for the temporary storage of the same.
- 2) If defects are discovered at the time of delivery or later, he may have the condition of the goods determined by experts. The Seller shall also be entitled to demand such determination if the Buyer has notified him that he objects to the goods due to defects.
- 3) The experts shall be appointed at the request of the party concerned by the Commercial Court or, in its absence, by the judge of the place.
- 4) The experts shall prepare the expert opinion in writing or on record.

---

German General Commercial Code

---

5) If the goods are exposed to spoilage and there is imminent danger, the buyer may have the goods sold subject to the provisions of Art. 343.

Art. 349

1) The defect of the contractual or legal quality of the goods cannot be claimed by the Buyer if it has been discovered only after the expiration of six months from the delivery to the Buyer.

2) Actions against the Seller for defects shall become time-barred six months after delivery to the Buyer.

3) The defences shall be extinguished if the immediate dispatch of the notification of the defect prescribed in Art. 347 has not been effected within six months after delivery to the buyer. If the notification has been made in this way, the defences shall remain valid.

4) The special laws or commercial customs by which a shorter period is determined for individual types of items shall not be changed by this.

5) If the Seller's liability is contractually fixed for a shorter or longer period, this shall be the end of the matter.

Art. 350

The provisions of Art. 347 and 349 cannot be invoked by the seller in case of fraud.

Art. 351

Unless otherwise stipulated by local custom or special agreement, the Seller shall bear the costs of handover, in particular measuring and weighing; the Buyer shall bear the costs of acceptance.

Art. 352

If the purchase price is to be calculated according to the weight of the goods, the weight of the packaging (tare weight) shall be deducted, unless otherwise determined by special agreement or by commercial usage at the place of delivery. Whether and to what extent the tare weight is to be deducted according to a certain rate or ratio instead of according to exact calculation, likewise whether and how much is to be calculated as the weight of the goods in favor of the buyer, or can be demanded as compensation for defective or unusable parts (refactoring), is to be judged according to the contract or the commercial practice at the place of delivery.

Art. 353

If in the contract the market price or the stock exchange price is stipulated as the purchase price, in case of doubt this shall be understood as the current price which is determined at the time and at the place of performance or at the trading place relevant for the latter in accordance with the local facilities available for this purpose; in the absence of such determination or in case of proven incorrectness thereof, it shall be understood as the average price which results from the comparison of the purchase contracts concluded at the time and at the place of performance.

Art. 354

If the buyer is in arrears with the payment of the purchase price and the goods have not yet been handed over, the seller shall have the choice whether to demand performance of the contract and damages for delayed performance or whether, instead of performance, to sell the goods for the account of the buyer under the provisions of Art. 343 and claim damages or whether to withdraw from the contract as if it had not been concluded.

Art. 355

If the seller is in default with the delivery of the goods, the buyer shall have the choice whether to demand performance together with damages for delayed performance or whether to claim damages for non-performance instead of performance or to withdraw from the contract as if it had not been concluded.

Art. 356

If, on the basis of the provisions of the preceding articles, a party to the contract wishes to claim damages for non-performance instead of performance or to withdraw from the contract, he must notify the other party to the contract and, if the nature of the transaction so permits, allow him a reasonable period of time to make good the omission.

Art. 357

1) If it is stipulated that the goods are to be delivered exactly at a fixed time or within a fixed period, Art.

356 shall not apply. The buyer as well as the seller may exercise the rights to which he is entitled under Art. 354 or 355 at his option. However, the party wishing to insist on performance must notify the other party immediately after the expiry of the time or period; if he fails to do so, he cannot insist on performance later.

2) If the seller wants to sell the goods for the account of the defaulting buyer instead of fulfilling the contract, he must, if the goods have a market or exchange price, sell the goods for the account of the defaulting buyer.

---

German General Commercial Code

---

make immediately after the expiry of the time or period. A later sale shall not be deemed to have been effected for the account of the buyer. A prior warning is not required, but in this case the seller must also notify the buyer of the sale without delay.

3) If the Buyer claims damages for non-performance instead of performance, the amount of damages to be paid by the Seller shall be the difference between the purchase price and the market price at the time and place of the delivery owed, without prejudice to the Buyer's right to claim demonstrably higher damages.

Art. 358

In the cases referred to in Art. 357, each counterparty shall be entitled to have the default of the other counterparty established by a public document (protest) at the latter's expense.

Art. 359

If, in the cases referred to in Articles 354, 355 and 357, it is clear from the circumstances, in particular from the nature of the contract, from the intention of the parties or from the nature of the thing to be performed, that the performance of the contract is divisible on both sides, the departure of one party from the contract may be made only in respect of that part of the contract which has not been performed by the other party.

3. Title

From the commission business

Art. 360

1) A commission agent is a person who concludes commercial transactions in his own name on behalf of a principal (principal).

2) The commission agent shall be solely entitled and obligated by the transactions which he concludes with third parties. No rights and obligations arise between the principal and the third parties.

3) If the principal expressly states that the transaction is to be concluded in his name, this is not a commercial commission, but an ordinary order for a commercial transaction.

Art. 361

The commission agent shall execute the transaction with the diligence of a prudent businessman in the interest of the principal in accordance with the order; he shall give the principal the necessary information, in particular he shall notify the principal immediately after the execution of the order; he shall be obliged to account for the transaction to the principal and to render to him what he is entitled to demand from the transaction.

Art. 362

If the commission agent does not act in accordance with the order he has accepted, he is obliged to compensate the principal for the loss; the principal is not obliged to accept the transaction for his account.

Art. 363

If the commission agent has sold below the price set for him, he must compensate the principal for the difference in price, unless he proves that a sale could not be executed at the set price and that the acceptance of the sale prevented damage to the principal.

Art. 364

1) If the commission agent has exceeded the price set for the purchase, the principal may reject the purchase as not having been made for his account, unless the commission agent offers to cover the difference at the same time as the purchase notice.

2) The principal, who wishes to reject the purchase as not having been made for his account, must declare this without delay on the purchase notice, otherwise the exceeding of the order shall be deemed to have been approved.

Art. 365

1) If the goods sent to the commission agent are found to be in an outwardly recognizable damaged or defective condition upon delivery, the commission agent must safeguard the rights against the carrier or skipper, provide proof of that condition and notify the principal without delay.

2) In the event of failure to do so, he shall be responsible for the resulting damage.

3) He may have the condition ascertained by experts and, if the property is exposed to spoilage and danger is imminent, effect the sale of the property, observing the provisions of Art. 343.

Art. 366

1) If changes occur in the good, which cause fears of its devaluation

---

German General Commercial Code

---

and if there is no time to obtain the order of the principal, or if the principal is in default in the granting of the order, the commissioner may cause the property to be sold, observing the provisions of article 343.

2) The commission agent shall have the same right in all other cases in which the principal, although obliged to do so according to the situation, fails to dispose of the goods.

Art. 367

1) The commission agent is responsible for loss of or damage to the goods while he is the custodian of the same, unless he proves that the loss or damage was caused by circumstances which could not have been prevented by the diligence of a prudent businessman.

2) The commission agent shall be liable for failure to insure the goods only if he has received an order from the principal to insure the goods.

Art. 368

1) Claims arising from a transaction concluded by the commission agent may be asserted by the principal against the debtor only after the assignment.

2) However, such claims, even if not assigned, shall be considered as claims of the principal in the relationship between the principal and the commission agent or its creditors.

Art. 369

1) The commission agent who makes advances or gives credit to a third party without the consent of the principal does so at his own risk.

2) However, to the extent that the commercial use at the place of the transaction entails crediting the purchase price, the commission agent shall also be entitled to do so in the absence of any other provision by the principal.

3) If the commission agent has sold on credit without authorization, he shall immediately be liable to the commission agent, who shall not authorize this, as the debtor of the

The commission agent shall be obliged to make payment of the purchase price. If the commission agent proves that the price would have been lower if the goods had been sold for cash, he shall pay only this price and, if it is lower than the price for the order, also the difference in accordance with Art. 363.

Art. 370

- 1) The commission agent shall be responsible for the payment or other fulfillment of his counterparty's obligation if this is assumed by him or is customary in the place where he is established.
- 2) The commission agent, who vouches for his counterparty, is directly and personally liable to the principal for the proper fulfillment at the time of expiration insofar as such can be legally demanded from the contractual relationship at all.
- 3) The commission agent, who vouches for his counterparty, is entitled to a remuneration (del credere commission) for this.

Art. 371

- 1) The principal shall be obliged to reimburse the commission agent for any expenses incurred by him or which are necessary or useful for the execution of the transaction. This also includes the compensation for the use of the warehouses and the means of transport of the commission agent and the work of his staff.
- 2) The commission agent shall claim the commission if the transaction has been executed. A commission cannot be claimed for transactions which have not been executed; however, the commission agent is entitled to the delivery commission, provided that such a commission is customary in the place.

Art. 372

- 1) If the commission agent concludes the contract on more favorable terms than those offered to him by the principal, the advantage shall accrue to the principal alone.
- 2) This applies in particular if the price for which the commission agent sells exceeds the lowest price determined by the principal, or if the price for which he purchases does not reach the highest price determined by the principal.

Art. 373

A commission agent who has accepted the purchase of a bill of exchange is obliged, when endorsing the bill, to endorse the same regularly and without reservation.

Art. 374

- 1) The commission agent shall have a lien on the commissioned goods, provided that he still has them in his custody or is otherwise still able to dispose of them, in particular by means of bills of lading, consignment bills or warehouse receipts.



---

German General Commercial Code

---

for costs incurred on the goods, for commission, for advances and loans granted in respect of the goods, for bills of exchange subscribed or otherwise incurred in respect of the goods, as well as for all claims from current account in commission business.

2) The commission agent may satisfy himself for the aforementioned claims from the claims established and still outstanding by the commission transaction preferably before the principal and his creditors.

Art. 375

If the principal is in default in the performance of the obligations against the commission agent referred to in the preceding article, the latter shall be entitled to be paid out of the assets of the commission agent subject to the provisions of Art. 310; he shall also have this right vis-à-vis the other creditors and the insolvency estate of the principal.

Art. 376

1) In the case of commission for the purchase or sale of goods, bills of exchange and securities which have a stock exchange or market price, the commission agent is authorized, unless the principal has determined otherwise, to deliver the goods which he is to purchase himself as seller, or to keep the goods which he is to sell for himself as buyer.

2) In this case, the commission agent's duty to account for the conclusion of the purchase or sale is limited to proving that the calculated price complies with the exchange price or market price at the time of execution of the order. He is obliged to

The customer is entitled to the usual commission and may charge the expenses that otherwise regularly occur in commission transactions.

3) If the commission agent does not name another person as buyer or seller at the same time as the notification of the execution of the order, the principal shall be entitled to claim the commission agent himself as buyer or seller.

Art. 377

If the principal revokes the order and the revocation is received by the commission agent before the notice of execution of the order has been given for the purpose of its dispatch, the commission agent may no longer avail himself of the power to act as buyer or seller.

Art. 378

The provisions of this title shall also apply if a merchant whose ordinary business is not commission business concludes a single commercial transaction in his own name for the account of a principal.

4. Title

From the forwarding business

Art. 379

A freight forwarder is a person who, in his own name and for the account of a third party, arranges for the shipment of goods by a carrier or skipper.

Art. 380

1) The forwarder shall be liable for any damage resulting from the neglect of due diligence of a prudent businessman in the receipt and storage of the goods, in the choice of carriers, skippers or intermediate forwarders and in general in the execution of the shipment of the goods undertaken by him.

2) The forwarder has to prove the application of this care.

Art. 381

1) The forwarder shall claim the commission and the reimbursement of what he has spent in expenses and costs or at all necessary or useful for the purpose of the shipment (Art. 371).

2) He is not authorized to charge a higher freight than the one agreed with the carrier or the skipper.

Art. 382

1) The forwarder shall have a lien on the goods in respect of freight, commission, expenses, costs and disbursements and in respect of advances made to the consignor on the goods, provided that he still has the goods in his custody or is in a position to dispose of them.

2) He may also assert this right against the other creditors and the owner's insolvency estate.

3) If the forwarder uses an intermediate forwarder, the latter shall at the same time exercise the rights to which his foreman is entitled, in particular his lien.

4) Insofar as the foreman has been satisfied by the forwarder on account of his claim for cash on delivery, the claim and the lien of the foreman shall pass to the forwarder by operation of law. The same shall apply with regard to the carrier's claim and lien if and insofar as the latter is satisfied by the intermediate forwarder.

Art. 383

A forwarder who arranges shipment by carrier or skipper, but by means of means of transport hired by him for his own account, may charge the usual freight together with the commission and other costs.

Art. 384

If a forwarder has agreed with the consignor or consignee on certain rates of transportation charges, he shall, in the absence of any agreement to the contrary, be liable for the intermediate forwarders and carriers accepted by him. In this case he shall be entitled to commission only if it is agreed that such commission may be claimed in addition to the specified rates of transportation charges.

Art. 385

- 1) Unless otherwise specified, the forwarder is authorized to carry out the transport of the goods himself.
- 2) If he makes use of this authority, he shall at the same time have the rights and duties of a carrier and may charge the usual freight, the commission and the expenses otherwise regularly occurring in forwarding transactions.

Art. 386

- 1) Actions against the forwarder for total loss or for reduction, damage or delayed delivery of the goods shall be time-barred after one year.
- 2) With regard to actions for total loss, the period shall commence at the end of the day on which the delivery should have been effected; with regard to actions for diminution, damage or delayed delivery, it shall commence at the end of the day on which the delivery was effected.
- 3) In the same way the objections on the grounds of loss, diminution, damage or late delivery of the goods are extinguished if the notification of these facts has not been sent to the forwarder within the one-year period.
- 4) The provisions of this article shall not apply in cases of fraud or misrepresentation of the forwarder.

Art. 387

In all other respects the rights and duties of the forwarder, insofar as this title does not contain any provisions in this respect, shall be judged in accordance with the principles of the preceding title; in particular, the provisions laid down in Articles 365 to 367 for the commission agent shall also apply to the forwarder.

Art. 388

If a merchant whose ordinary course of business is not freight forwarding undertakes to arrange for the shipment of goods by a carrier or skipper for the account of a third party in his own name, the provisions of this title shall apply with respect to such transaction.

Art. 389

The provisions of this title shall not apply to persons who merely act as intermediaries for contracts of carriage between the shipper and the carrier or skipper (freight brokers, freight brokers, ship's brokers).

5. Title

From the freight business

1. Section

Of the freight business in

general Art. 390

A carrier is a person who commercially carries out the transport of goods on land or on rivers and inland waterways.

Art. 391

- 1) The consignment note serves as a proof of the contract between the carrier and the sender.
- 2) The carrier may require the issue of a consignment note. The consignment note contains:

## Art. 392

1. the designation of the goods according to their nature, quantity and marks;
2. the name and place of residence of the carrier;
3. the name of the sender;
4. the name of the person to whom the property is to be delivered;
5. the place of delivery;
6. the provision in respect of the freight;
7. the place and day of the exhibition;
8. the special agreements which the parties may have made on other points, namely on the time within which the transport is to be effected and on the compensation for late delivery.

## Art. 393

The sender shall be obliged, in the case of goods which are subject to customs or fiscal treatment before delivery to the consignee, to place the carrier in possession of the accompanying documents required for this purpose. The sender shall be liable to the carrier, unless the carrier himself is at fault, for all penalties and damages suffered by him on account of the incorrectness or insufficiency of the accompanying documents.

## Art. 394

- 1) If nothing is stipulated in the contract of carriage as to the time within which the carrier is to effect the carriage, the time within which he must start the voyage shall be determined by local custom; if there is no local custom, the voyage shall be started within a time reasonable in the circumstances of the case.
- 2) If the commencement or continuation of the voyage is temporarily prevented by natural events or other contingencies, the sender need not wait for the hindrance to be lifted; on the contrary, he may withdraw from the contract, but must compensate the carrier for the costs of preparing the voyage, the costs of re-delivery and the claims in respect of the voyage already made, provided the carrier is not at fault. The amount of compensation shall be determined by local custom and, in the absence thereof, by judicial discretion.

## Art. 395

- 1) The carrier shall be liable for damage caused by loss of or damage to the goods from the time of receipt until the time of delivery, unless he proves that the loss or damage was caused by force majeure (*vis major*) or by the natural condition of the goods, namely by internal spoilage, shrinkage, ordinary leakage and the like, or by defects in the packaging which are not apparent from the outside.
- 2) The carrier shall be liable for valuables, monies and securities only if such nature or value of the goods has been indicated to him.

Art. 396

- 1) If, by virtue of the preceding article, compensation must be paid by the carrier for loss of or damage to the goods, the calculation of the damage shall be based only on the fair market value of the goods.
- 2) In the event of loss, the common market value of the goods of the same kind and quality at the place of delivery at the time when the goods were to be delivered shall be compensated; from this amount shall be deducted any customs duties and expenses saved as a result of the loss.
- 3) In the event of damage, the difference between the saleable value of the goods in the damaged condition and the fair market value which the goods would have had without such damage at the place and time of delivery, after deduction of customs duties and expenses, insofar as they have been saved as a result of the damage, shall be compensated.
- 4) If the goods have no commercial value, the calculation of the damage shall be based on the actual value of the goods.
- 5) If the carrier is proved to have acted in bad faith, he shall be liable for the full damage.

Art. 397

The carrier shall be liable for damage caused by failure to meet the agreed or usual delivery time, unless he proves that he could not have avoided the delay by exercising the diligence of a prudent carrier.

Art. 398

If in case of delayed delivery a deduction from the freight or the loss of the freight or otherwise a contractual penalty is stipulated, then in case of doubt also the compensation of the damage exceeding this amount, which has arisen due to the delayed delivery, can be claimed.

---

German General Commercial Code

---

Art. 399

If the carrier proves that he could not have prevented the delay by the diligence of a prudent carrier, the stipulated total or partial withholding of the freight or the penalty for late delivery may not be claimed.

unless a contrary intention results from the contract.

Art. 400

The carrier shall be liable for its employees and for other persons it uses in the performance of the transport it has undertaken.

Art. 401

1) If the carrier hands over the goods to another carrier for the full or partial execution of the transport undertaken by him, he shall be liable for this carrier and any subsequent carriers until delivery.

2) Each carrier succeeding another carrier shall, by accepting the goods with the original consignment note, enter into the contract of carriage in accordance with the consignment note, assume an independent obligation to perform the carriage in accordance with the contents of the consignment note, and shall also be liable for the obligations of the former carriers in respect of the carriage already performed by them.

Art. 402

1) The carrier shall comply with any instructions given subsequently by the sender for the return of the goods or for their delivery to a consignee other than the consignee named in the consignment note until he has handed over the consignment note to the consignee after the arrival of the goods at the place of delivery.

2) If this has already been done, he shall only have to observe the instructions of the designated consignee, failing which he shall be liable to the same for the goods.

Art. 403

The carrier shall hand over the goods to the consignee specified in the consignment note at the place of delivery.

Art. 404

The consignee named in the consignment note shall be entitled, before the arrival of the goods at the place of delivery, to demand from the carrier all information necessary for the

The sender shall be entitled to take the necessary measures to secure the goods and to give the carrier the necessary instructions for this purpose; he may only require the goods to be delivered before their arrival at the place of delivery if the sender has authorized the carrier to do so.

Art. 405

After the arrival of the carrier at the place of delivery, the consignee named in the consignment note shall be entitled to enforce in his own name against the carrier the rights conferred by the contract of carriage against performance of the obligations set out in the consignment note, whether he is acting in his own interest or in the interest of a third party; in particular, he shall be entitled to require the carrier to hand over the consignment note and to deliver the goods, unless the sender, before instituting proceedings, has given him instructions to the contrary which are still admissible under article 402.

Art. 406

By accepting the goods and the consignment note, the consignee is obliged to make payment to the carrier in accordance with the consignment note.

Art. 407

- 1) If the designated consignee of the goods cannot be identified or refuses to accept the goods, or if a dispute arises as to the acceptance or the condition of the goods, the party concerned may have the latter determined by experts.
- 2) Experts shall be appointed at the request of the party concerned by the commercial court or, in its absence, by the local judge.
- 3) The experts shall give their opinion in writing or on record.
- 4) The court may, at the request of the party concerned, order that the goods be deposited in a public warehouse or with a third party, and that they be sold to the public, in whole or in part, for payment of the freight and the carrier's other claims.
- 5) The party to the dispute, if present at the place, shall be heard on the application for the appointment of experts or for the court's order on the grounds of abandonment and sale of the property.

Art. 408

- 1) Acceptance of the goods and payment of the freight shall extinguish any claim against the carrier.



German General Commercial Code

---

2) Only for loss or damage which was not externally apparent at the time of delivery may a claim be made against the carrier even after acceptance and after payment of the freight, if the loss or damage was ascertained without delay after discovery and it is proved that the loss or damage occurred during the period from receipt to delivery.

3) The provisions concerning the limitation of actions and defences against the carrier for loss of, damage to or delay in delivery of the goods (Art. 386) shall also apply to the carrier.

## Art. 409

1) The carrier shall have a lien on the goods in respect of all claims arising out of the contract of carriage, in particular freight and demurrage charges, customs duties and other expenses. This lien shall continue to exist as long as the goods are retained or laid up; it shall also continue to exist after delivery, provided that the carrier claims it in court within three days after delivery and the goods are still with the consignee or with a third party holding them for the consignee.

2) He may arrange for the sale of the property or part of it to satisfy his claims (Art. 407).

3) He has this right also against the other creditors and the insolvency estate of the owner.

## Art. 410

1) If the goods pass through the hands of several carriers, the last carrier shall, at the time of delivery, unless the consignment note provides otherwise, also be liable for the claims arising from the consignment note.

of the preceding ones and to exercise their rights, in particular also the right of lien.

2) The preceding carrier who is satisfied by the succeeding one shall transfer his claim and lien to the latter by operation of law.

3) In the same way the claim and the lien of the forwarder is transferred to the subsequent forwarder and the carrier.

4) The lien of the foremen shall continue as long as the lien of the last carrier.

## Art. 411

If, on the same property, two or more companies are registered in accordance with Articles 374, 382 and 409

liens exist, then among those liens which have arisen as a result of the shipment or transport of the goods, the lien which arose later shall take precedence over the lien which arose earlier; these liens shall all take precedence over the lien of the commission agent and over the lien of the forwarder for advances; among the latter liens, the lien which arose earlier shall take precedence over the lien which arose later.

Art. 412

If the carrier delivers the goods without payment and does not assert the lien in court within three days after delivery, he, as well as the preceding carriers and the forwarding agents, shall lose the right of recourse against the foremen. The claim against the consignee remains in force.

Art. 413

- 1) The shipper and the carrier may agree that the latter shall issue a consignment bill to the former.
- 2) The consignment bill is a document by which the carrier undertakes to hand over the goods.

Art. 414

- 1) The load ticket contains:
  1. the designation of the loaded goods according to their nature, quantity and characteristics;
  2. the name and place of residence of the carrier;
  3. the name of the sender;
  4. the name of the person to whom or to whose order the goods are to be delivered. The sender is to be understood as such if the bill of lading is only made out to order;
  5. the place of delivery;
  6. the provision in respect of the freight;
  7. the place and day of the exhibition.
- 2) The bill of lading must be signed by the carrier.
- 3) At the carrier's request, the shipper shall hand over to the carrier an identical copy of the consignment bill signed by the shipper.

Art. 415

German General Commercial Code

---

1) The consignment bill shall determine the legal relationship between the carrier and the consignee of the goods; the provisions of the contract of carriage not included therein shall have no legal effect vis-à-vis the consignee unless express reference is made thereto.

2) The legal relationship between the carrier and the sender shall be governed by the provisions of the contract of carriage.

## Art. 416

If the carrier has issued a consignment bill, he may only comply with subsequent instructions of the consignor to return or deliver the goods to a consignee other than the one authorized by the consignment bill if the consignment bill is returned to him. If he acts contrary to this provision, he shall be liable for the goods to the rightful holder of the consignment bill.

## Art. 417

The person to whom the goods are to be delivered according to the bill of lading or to whom the bill of lading, if it is in order, is transferred by endorsement shall be entitled to receive the goods.

## Art. 418

The carrier shall be obliged to deliver the goods only against return of the consignment note on which the delivery of the goods is to be certified.

## Art. 419

Furthermore, the provisions concerning the rights and obligations of the carrier shall apply even if a consignment bill has been issued.

## Art. 420

If, in a particular case, a merchant whose ordinary course of business does not extend to the performance of freight transactions undertakes to transport goods by land or by river or inland waterway, the provisions of this title shall also apply in respect of such transaction.

## Art. 421

1) The provisions of this section shall also apply to freight transactions of railroads and other public transport institutions.

2) However, they shall apply to postal institutions only to the extent that they are not governed otherwise by special laws or ordinances.

3) The provisions of the following section shall also apply to railroads.

## 2. Section

From the freight business of railroads in particular Art.

### 422

1) A railroad which is open to the public for the transport of goods may not refuse to enter into a freight transaction for its railroad line, provided that the railroad is open to the public for the transport of goods:

1. the goods, in themselves or by virtue of their packaging, are suitable for transport in accordance with the regulations and, if the latter are lacking or do not provide any guidance, in accordance with the facilities and the method of use of the railroad;

2. the shipper submits to the generally applicable regulations of the railroad administration with regard to the freight, the delivery of the goods and the other conditions of transportation which are optional for the railroads;

3. the regular means of railroad transport are sufficient to carry out the transport.

2) The railroads are not obliged to accept the goods for transportation until the transportation of the same can take place.

3) With regard to the time of transportation, no shipper may be favored over the other without a reason based on the railroad's facilities, the transportation conditions, or the public interest.

4) Violation of the provisions of this article shall give rise to the right to compensation for the damage caused thereby.

### Art. 423

1) The railroads referred to in article 422 shall not be entitled to exclude or limit in advance, for their own benefit, by contract (by means of regulations or by special agreement), the application of the provisions contained in articles 395, 396, 397, 400, 401 and 408 relating to the carrier's liability for damages, whether in respect of the occurrence, extent or duration of the liability or in respect of the burden of proof, except in so far as such exclusion or limitation is permitted by the following articles.

2) Contractual provisions which conflict with this provision shall have no legal effect.

### Art. 424

1) It can be conditioned:

1. in respect of goods transported in uncovered wagons as agreed with the shipper:

that no liability is assumed for damage resulting from the risk associated with this type of transport;

2. in respect of goods which, irrespective of their nature, require packaging to protect them against loss or damage in transit, are, according to the shipper's declaration on the consignment note, sent unpacked or with defective packaging:

that there is no liability for damage resulting from the risk associated with the defect of the packaging or with the defective condition of the packaging;

3. in respect of the goods, the loading and unloading of which shall be arranged by the consignor upon agreement with the consignor:

that there is no liability for damage resulting from the danger connected with loading and unloading or with defective loading;

4. in respect of goods which, by virtue of their inherent natural condition, are exposed to a special risk of total or partial loss or damage, namely breakage, rust, internal spoilage, unusual leakage, etc:

that there is no liability for the damage resulting from this risk;

5. in respect of live animals:

that no liability is accepted for damage resulting from the particular danger to these animals associated with their transport;

6. in respect of accompanied goods:

that there is no liability for damage resulting from the danger, the prevention of which is the purpose of the escort.

2) If one of the provisions permitted by this Article is stipulated, it shall be deemed stipulated at the same time: that until the contrary is proved, it shall be presumed that damage which has occurred, if it could have arisen from the risk not assumed, has actually arisen from the same.

3) No exemption from liability under this article may be claimed if it is proved that the damage was caused by the fault of the railroad administration or its employees.

Art. 425

1) In view of the luggage can be conditioned:

1. that liability for loss of or damage to luggage not checked in for transport is only accepted if fault on the part of the railroad administration or its employees is proven. The same can

in respect of items contained in travel equipment;

2. that the loss of baggage checked in for transport is only covered if the baggage is claimed within a certain period after the time of delivery.

2) The time limit may not be shorter than three days.

Art. 426

1) In the case of goods which, by reason of their natural condition, regularly suffer loss of weight or measurement in transit, it may be stipulated that no liability shall be assumed for loss of weight or measurement up to a standard rate determined in advance. If several pieces have been transported together, the standard rate must be calculated separately for each individual piece, if the weight or measure of the individual pieces is recorded in the consignment note or can otherwise be proved.

2) The provision referred to herein may not be invoked if it is proved that, under the circumstances of the case, the loss did not arise as a result of the natural condition of the goods, or that the specified standard rate does not correspond to that condition or to the other circumstances of the case.

Art. 427

1) can be conditioned:

1. that the value to be taken as a basis for the calculation of the damage in accordance with article 396 shall not exceed the amount stated as the value of the goods in the consignment bill, the consignment bill or the luggage bill and, in the absence of such a statement, a standard rate determined in advance;

2. that the amount of damages payable under article 397 for late delivery shall not exceed the amount stated in the consignment bill, the consignment bill or the baggage check as the amount of the interest in the timely delivery and, in the absence of such a statement, a standard rate determined in advance, which may also consist of the loss of the freight or a part thereof.

2) In the event of malicious conduct on the part of the railroad administration or its employees, the limitation of liability to the standard rate or the stated value of the goods may not be invoked.

Art. 428

1) It may be stipulated that after the goods have been received and the freight has been paid, any claim for loss of or damage to the goods shall be extinguished even if such loss or damage was not apparent at the time of delivery and was not discovered until later (Art. 408 par. 2), if the claim has not been lodged with the railroad administration within a specified period after delivery.

2) The period may not be shorter than four weeks.

Art. 429

If a railroad takes over the goods with a consignment note according to which the transport is to be effected by several successive railroads, it may be stipulated that not all the railroads which have taken over the goods with the consignment note shall be liable as carriers for the whole transport in accordance with the provisions of Art. 401, but that only the first railroad and the railroad which last took over the goods with the consignment note shall be liable for the whole carriage, subject to the right of recourse of the railroads against each other, and that one of the other railroads in the middle shall be liable as carrier only if it can be proved that the damage occurred on its railroad.

Art. 430

If a railroad accepts the goods for carriage under a consignment note in which the place of delivery is designated as being neither on its railroad nor on one of the railroads adjoining it, it may be stipulated that the liability of the railroad or of the railroads as carrier shall not cover the entire carriage up to the place of delivery but only the carriage up to the place where the carriage by railroad is to end; if this is stipulated, only the obligations of the forwarder shall apply in respect of the onward carriage.

Art. 431

If the shipper specifies on the consignment note that the goods are to be delivered to a place on the railroad or that they are to lie  
shall be deemed to have been agreed, irrespective of the fact that the consignment note

the transport is considered to be taken over only up to that place located at the railroad, and the railroad is responsible only up to the delivery to this place.



## II. Labor Code

from 29 December 1966

### I. Scope Art. 1

#### *Operational and personal scope*

- 1) The law is applicable to all public and private enterprises, subject to articles 2 to 4.
- 2) An establishment within the meaning of the Act exists if an employer employs one or more employees on a permanent or temporary basis, regardless of whether certain facilities or equipment are present. If the conditions for the applicability of the law are only met for individual parts of an establishment, the law is only applicable to these parts.
- 3) The law applies to employees employed in Liechtenstein by a company located abroad, insofar as this is possible under the circumstances.

### Art. 2

#### *Exceptions to the operational scope*

- 1) The law is not applicable, subject to Art. 3a:
  - a) to the state administration and municipal administrations, subject to par. 2;
  - b) to primary agricultural holdings, including secondary holdings, in which the products of the main holding are predominantly processed or utilized, as well as to local milk collection centers and the milk processing plants associated with them;
  - c) to farms with predominantly horticultural plant production, subject to paragraph 3;
  - d) on private households.
- 2) The corporations, institutions and foundations under public law which are to be assimilated to the state administration, as well as the enterprises of the state and of the municipalities to which the law applies, shall be designated by ordinance.
- 3) Individual provisions of the Act may be declared applicable by ordinance to enterprises with predominantly horticultural plant production that train apprentices, insofar as this is necessary for the protection of apprentices.

Art. 3

*Exceptions from the personal scope*

The law is further not applicable, subject to Art. 3a:

- a) to persons of clerical status and other persons serving churches, as well as to members of religious orders and mother houses or other religious communities;
- b) to the personnel of public administrations of foreign states or international organizations residing in Liechtenstein;
- c) to employees who perform higher managerial activities or scientific or independent artistic activities;
- d) to assistant physicians, teachers at private schools, and to teachers, caretakers, educators, and supervisors in institutions;
- e) to home workers;
- f) to commercial travelers.

Art. 3a

*Regulations on health protection, rest and working time, and special protection for young people.*

- 1) The provisions of this Act relating to health protection shall apply:
  - a) on the state administration and municipal administrations;
  - b) to employees who perform a higher managerial activity or a scientific or independent artistic activity;
  - c) to assistant physicians, teachers at private schools, as well as to teachers, caretakers and supervisors in institutions.
- 2) The provisions of this Act on rest and working time shall apply:
  - a) on the state administration and municipal administrations;
  - b) to assistant physicians, teachers at private schools, as well as to teachers, caretakers and supervisors in institutions.
- 3) The provisions of this Act and its ordinances on special protection for young persons shall apply to establishments within the meaning of Article 2 and to home workers.

Art. 4

*Family farms*

- 1) Subject to the provisions on health protection, the Act does not apply to establishments where only the spouse or registered partner of the holder, his blood relatives in the ascending and descending lines and their spouses or registered partners, as well as his stepchildren and adopted children work.
- 2) If persons other than those mentioned in para. 1 are also active in the enterprise, the law shall apply only to them.
- 3) Individual provisions of the law may be declared applicable to juvenile family members within the meaning of subsection 1 by ordinance, insofar as this is necessary to protect the life and health of the juveniles or to safeguard morality.

#### Art. 5

##### *Special regulations for industrial operations*

- 1) The special provisions of the law for industrial establishments are applicable to the individual establishment or to individual parts of the establishment only on the basis of a decree of the government.
- 2) For the purposes of the Act, industrial establishments are establishments with a fixed installation of a permanent nature for the production, processing or treatment of goods or for the production, conversion or transmission of energy, provided that the method of operation or the organization of work is determined by machinery or other technical equipment or by serial operations, and
  - a) at least six employees are employed for the production, processing or treatment of goods or for the production, conversion or transmission of energy, or
  - b) the method of operation or the organization of work is essentially determined by automated processes, or
  - c) life or health of employees are exposed to particular hazards.

#### II. Health protection and planning approval

#### Art. 6

##### *Duties of the employer*

- 1) The employer is obliged to take all measures to protect the health of employees that are necessary according to experience, applicable according to the state of the art and appropriate to the conditions of the company. He

shall also provide for the necessary measures to protect the personal integrity of employees; these measures shall include, in particular, protection against sexual harassment in the workplace.

2) In particular, the employer must design the company facilities and the work process in such a way that health hazards and excessive strain on employees are avoided as far as possible. He must also ensure that employees do not consume alcohol or other intoxicating substances in the course of their work.

3) The employer must involve the employees in the protection of their health.

4) The measures to be taken for health protection in the companies are determined by ordinance.

#### Art. 7

##### *Duties of employees*

1) Employees are obliged to assist the employer in the implementation of health protection regulations.

2) In particular, employees shall use health and safety equipment correctly and shall not remove or modify it without the employer's permission.

#### Art. 8

##### *Planning approval and operating permit*

1) Any person who wishes to establish or remodel a commercial establishment that is likely to be or is already subject to compulsory accident insurance, or an industrial establishment, shall apply to the Office of National Economy for approval of the proposed establishment.

2) If the planned installation complies with the regulations, the Office of Economic Affairs approves the plans, if necessary with the condition that special protective measures must be taken.

3) A company may only commence its activities after it has received an operating permit from the Office of National Economy.

### III. Working and rest time

#### 1. Working time

#### Art. 9

##### *Maximum weekly working time*

1) The maximum weekly working time is:

a) 45 hours for employees in industrial enterprises as well as for office personnel, technical and other employees, including sales personnel in wholesalers and retailers;

b) 48 hours for all other employees;

c) 40 hours for juvenile workers who are at least 15 years old but not yet 18.

2) In exceptional cases or in cases where this is justified by objective reasons, a regulation may deviate from the maximum weekly working time specified in paragraph 1(c). They may not exceed the working hours specified in Paragraph 1(a) and (b).

3) For certain groups of establishments or employees, the maximum weekly working time may be temporarily extended by a maximum of four hours by ordinance, provided that it does not exceed on average the reference periods specified in the ordinance.

4) Retrieved

5) Office personnel, technical and other employees, including sales personnel in large retail businesses, who are employed in the same business or part of a business together with employees who are subject to a longer maximum weekly working time, are also subject to this provision.

#### Art. 10

##### *Daily work*

1) Operational daytime work may not begin before 6 a.m. and may not last longer than 11 p.m.

2) The start and end of the working day may be determined differently between 5 a.m. and midnight if the employee representative body in the company or, where there is no such body, the majority of the employees concerned so agree. In this case, the maximum daily working time shall also not exceed 17 hours.

3) The individual employee's daily work, including breaks and overtime, must be within 13 hours.

#### Art. 11

##### *Compensation for lost working time*

1) If work is suspended for a relatively short period of time due to operational disruptions, company vacations, between non-working days or under similar circumstances, or if an employee is granted non-working days at his/her request, the employer may order appropriate compensation within a reasonable period of time as a deviation from the maximum weekly working time.

2) Compensation for individual employees, including overtime, may not exceed two hours per day, except on non-working days or half-days. In the case of night work, shift work and uninterrupted operation, lost working time may be compensated only to the extent that the permissible daily working time is not exceeded as a result.

3) Retrieved

#### Art. 12

##### *Conditions and duration of overtime work*

1) The maximum weekly working time may be exceeded in exceptional cases:

- a) due to urgency of work or extraordinary rush of work;
- b) for inventory taking, closing of accounts and liquidation work;
- c) for the prevention or elimination of operational disturbances, insofar as the employer cannot be expected to take other precautions.

2) Overtime may not exceed two hours per day for an individual employee, except on non-working days or in emergencies, and the average weekly working time, including overtime, may not exceed 48 hours in a four-month period.

3) Retrieved

4) Retrieved

#### Art. 13

##### *Wage supplement for overtime work*

1) The employer shall pay employees a wage supplement of at least 25% for overtime work, office personnel and technical and other employees, including sales personnel in large retail businesses, but only for overtime work that exceeds 60 hours in a calendar year.

2) If overtime work is compensated by time off of the same duration within a reasonable period of time with the agreement of the individual employee, no supplement shall be paid.

## Art. 14

*Auxiliary  
work*

2. Rest period Art. 15  
15

Repealed

*Breaks*

- 1) Work shall be interrupted by breaks of the following minimum duration:
  - a) a quarter of an hour in the case of a continuous working period of more than five and a half hours;
  - b) half an hour for a continuous working period of more than seven hours;
  - c) one hour in case of a continuous working period of more than nine hours.
- 2) Breaks are considered working time if employees are not allowed to leave their workplace.

## Art. 15a

*Daily rest*

- 1) Employees shall be granted a daily rest period of at least eleven consecutive hours.
- 2) The rest period may be reduced to eight hours once a week for adult employees when changing shifts, provided that the duration of eleven hours is observed on average over two weeks.

## Art. 16

*Prohibition of night work*

The employment of employees outside the operational daytime work in accordance with Art. 10 is prohibited. Art. 17 remains reserved.

## Art. 17

*Exceptions to the ban on night work*

- 1) Exceptions to the ban on night work require the approval of the Office of National Economy.
- 2) Temporary night work may be authorized if an urgent need is demonstrated.
- 3) Permanent or regularly recurring night work may be authorized,

provided that it is indispensable for technical or economic reasons.

4) Night work between 5 a.m. and 6 a.m. and between 11 p.m. and midnight will be approved if an urgent need is demonstrated.

5) The employer may not require the employee to work at night without the employee's consent.

Art. 17a

*Duration of night work*

1) In the case of night work, the daily working time for an individual employee may not exceed eight hours and, including breaks, must be within a period of nine hours.

2) If the employee is employed on no more than three out of seven consecutive nights, the daily working time may be ten hours under the conditions to be determined by ordinance; however, it must be within a period of twelve hours, including breaks.

3) If the employee is usually employed for at least three hours of his/her daily working time or for more than 600 hours per calendar year during night time, the daily working time may in any case not exceed eight hours on average over one year.

Art. 17b

*Wage supplement*

The employer shall pay a wage supplement of at least 25% to the employee who performs night work only temporarily.

Art. 17c

*Medical examination and consultation*

1) An employee who works at night for a long period of time is entitled to a health check-up and advice on how to reduce or avoid health problems related to his/her work.

2) The details are regulated by ordinance. For certain groups of employees, the medical examination may be declared mandatory.

3) The costs of the medical examination, including the sickness certificate fee and the consultation, shall be borne by the employer, unless the employee's health insurance fund or another insurer pays for them.



## Art. 17d

*Incapacity for night work*

The employer shall, if possible, transfer an employee who is declared unfit for night work for health reasons to similar day work for which he is fit.

## Art. 17e

*Further measures for night work*

1) To the extent required by the circumstances, an employer who regularly employs workers at night shall be obliged to provide for other suitable measures for the protection of the workers, namely

The company's employees are also aware of the importance of safety on the way to and from work, the organization of transportation, and rest and refreshment facilities.

2) The Office of Economic Affairs may attach corresponding conditions to the working time permits.

## Art. 18

*Prohibition of Sunday work*

1) During the period between 11 p.m. on Saturday and 11 p.m. on Sunday, the employment of workers is prohibited. Art. 19 and 27a remain reserved.

2) Public holidays, which are to be equated with Sundays, are: New Year's Day, Epiphany, Easter Monday, May 1, Ascension Day, Whit Monday, Corpus Christi, Assumption, Nativity, All Saints' Day, Immaculate Conception, Christmas, St. Stephen's Day.

3) The 24-hour period specified in paragraph 1 may be brought forward or postponed by a maximum of one hour if the employee representative body in the enterprise or, where there is no such body, the majority of the employees concerned so agree.

## Art. 19

*Exceptions from the ban on Sunday work*

1) Exceptions to the ban on Sunday work require the approval of the Office of Economic Affairs.

2) Temporary Sunday work may be authorized if an urgent need is demonstrated.

- 3) Permanent or regularly recurring Sunday work may be authorized if it is indispensable for technical or economic reasons.
- 4) The employer may not require the employee to work on Sundays without the employee's consent.
- 5) The employer shall pay a 100% wage supplement to the employee who only temporarily works on Sundays.
- 6) Employees shall be given the necessary time off to attend religious services at their request, if possible.

Art. 20

*Sunday off and substitute rest*

- 1) Within two weeks, at least one entire Sunday must be released as a weekly day of rest immediately before or after the daily rest period. Art. 24 remains reserved.
- 2) Sunday work lasting up to five hours shall be compensated by time off. If it lasts longer than five hours, an alternative day of rest of at least 24 consecutive hours must be granted during the preceding or following week after the daily rest period.
- 3) The employer may temporarily require employees to work during the replacement rest period to the extent necessary to prevent the spoilage of goods or to prevent or remedy operational disruptions, but the replacement rest shall be granted no later than the following week.

Art. 21

*Weekly half day off*

- 1) If the weekly working time is distributed over more than five days, employees shall be granted a half-day off each week, with the exception of weeks in which a day off falls.
- 2) With the consent of the employee, the employer may grant weekly half-days off for a maximum of four consecutive weeks; the maximum weekly working hours must be observed on average.
- 3) Art. 20 Para. 3 shall apply mutatis mutandis.

Art. 22

*Prohibition of compensation for the rest period*

The rest period may not be compensated by cash benefits or other benefits, except when the employment relationship ends.

### 3. Uninterrupted operation

#### Art. 23

##### *Two-shift daily work*

#### Repealed Art.

#### 24

##### *Uninterrupted operation*

- 1) Continuous operation requires a permit from the Office of National Economy.
- 2) Temporary uninterrupted operation may be authorized if an urgent need is demonstrated.
- 3) Permanent or recurring uninterrupted operation may be authorized if it is indispensable for technical or economic reasons.
- 4) An ordinance shall determine under which additional conditions and to what extent the maximum daily and weekly working hours may be extended and the rest period may be distributed differently in the case of uninterrupted operation. The maximum weekly working time may not be exceeded on average over 16 weeks.
- 5) In all other respects, the regulations on night and Sunday work shall apply to uninterrupted operation.

### 4. Other regulations

#### Art. 25

##### *Shift change*

- 1) Working hours shall be scheduled so that the individual employee is not required to work the same shift for more than six consecutive weeks.
- 2) In the case of two-shift day work, the employee must work an equal share of both shifts, and in the case of night work, an equal share of both day and night work.
- 3) With the consent of the employees concerned and in compliance with conditions and requirements to be established by regulation.

the duration of six weeks may be extended or the change may be waived altogether.

#### Art. 26

*Further protective provisions*

- 1) Overtime, night work, Sunday work, shift work and uninterrupted operation may be subject to additional provisions for the protection of employees by ordinance within the limits of the maximum weekly working hours.
- 2) The maximum weekly working time may be reduced by ordinance for certain groups of establishments or employees to the extent necessary to protect the health of employees.

Art. 27

*Special provisions for certain groups of establishments or employees or certain establishments*

- 1) Certain groups of establishments or employees may be exempted in whole or in part from the provisions of Articles 9 to 17a, 18 to 21, 24, 25, 31 and 36 by ordinance or, in individual cases, by order of the Government, and may be subject to special provisions to the extent necessary in view of their particular circumstances.
- 2) Such special provisions may be established in particular:
  - a) for educational, teaching, welfare, nursing, medical treatment and pharmacy establishments;
  - b) for establishments providing accommodation, catering and entertainment, as well as for establishments serving the hospitality industry on special occasions;
  - c) for establishments serving the needs of tourism or the agricultural population;
  - d) for establishments serving the supply of perishable goods;
  - e) for establishments engaged in the processing of agricultural products and for horticultural establishments not covered by Art. 2, para. 1, subpara. c;
  - f) for forestry operations;
  - g) for establishments serving the supply of electricity, gas or water;
  - h) for operations that serve to supply vehicles with operating materials or to maintain and repair them;
  - i) for editorial offices of newspapers and magazines;
  - k) for employees working on construction sites and in quarries for whom special working time regulations are required due to special circumstances;
  - l) for employees whose working time is to a considerable extent purely attendance time

or whose activity requires travel or frequent relocation to a significant extent.

#### Art. 27a

##### *Special provisions for retail stores and service station stores*

- 1) The employer may employ employees in retail stores or service stations on Sundays. This is subject to the provisions of commercial law.
- 2) Retail stores are sales outlets for daily needs, especially grocery stores, as well as establishments serving the satisfaction of specific needs of tourists.
- 3) For employees who perform work on Sundays in stores or service stations in accordance with paragraph 1, the employer shall grant a wage supplement of 50% of the gross wage. For employees who only perform work on Sundays, the average wage paid during the week for comparable work under the same conditions shall serve as the basis.
- 4) Employees must be granted at least 26 Sundays off per calendar year. They may be distributed irregularly throughout the year. However, at least four free Sundays must be granted in the period of a calendar quarter. The number of free Sundays may be reduced to the minimum number of four, provided that the employee's weekly working time does not exceed 18 hours on average over 4 weeks. The employee must disclose all employment relationships to the employer.
- 5) Overtime worked on Sunday shall be compensated within 14 weeks by time off of equal duration.
- 6) Art. 19 par. 4 and 6 are applicable.

#### Art. 28

##### *Minor deviations*

The competent authority is authorized to provide for minor deviations from the provisions of the law or an ordinance in its working time permits on an exceptional basis, provided that compliance with these provisions is prevented by extraordinary difficulties and the consent of the majority of the employees involved or their representatives in the enterprise is obtained.

#### IV. Special protection regulations

##### 1. Young workers

Art. 29

*General regulations*

- 1) Young people are employees and apprentices of both sexes up to the age of 18.
- 2) The employer shall have due regard for the health of the young people and shall ensure that morality is maintained. In particular, he must ensure that the young people are not overworked and are protected from bad influences in the company.
- 3) In order to protect life and health or to safeguard morals, the use of young people for certain types of work may be prohibited by decree or, in individual cases, by order of the government, or may be made subject to special conditions.
- 4) When employing a young person, the employer must request proof of age. By decree or, in individual cases, by order of the government, it may be stipulated that a medical certificate must also be provided.

Art. 30

*Minimum age*

- 1) Young persons may not be employed before they have reached the age of 15. Paragraph 2 remains reserved.
- 2) A decree shall determine the groups of companies or employees and the conditions under which young people aged between:
  - a) more than 14 years of age may be required to perform light work; however, certain categories of light work may be performed by youth more than 13 years of age;
  - b) less than 15 years of age may be employed in cultural, artistic and sporting performances as well as in promotional events.

Art. 31

*Working and rest time*

- 1) The daily working hours of the young persons may not exceed those of the other employees employed in the enterprise and, if there are no other employees, the usual local working hours and may not exceed eight hours. Any overtime work as well as compulsory lessons, insofar as they fall within the working hours, shall be counted towards the working hours.

- 2) The daily work of young people, including breaks, must be within a period of twelve hours. Adolescents up to the age of 16 may be employed until 8 p.m. at the most, and adolescents over 16 may be employed until 10 p.m. at the most. Deviating provisions on the employment of young people within the meaning of Art. 30 Para. 2 remain reserved.
- 3) Adolescents may not be required to work overtime until they reach the age of 16.
- 4) The employer may not employ young people during the night and on Sundays. Exceptions may be provided for by ordinance, in particular in the interest of vocational training and for the employment of young people within the meaning of Art. 30 Para. 2.
- 5) In exceptional cases or in cases where this is justified by objective reasons, the daily maximum working time specified in paragraph 1 may be deviated from by decree.

#### Art. 32

##### *Special duties of care of the employer*

- 1) If the young person falls ill, suffers an accident or proves to be a health or moral hazard, the holder of parental authority or the guardian must be notified. Until the arrival of their instructions, the employer must take the necessary measures.
- 2) If the juvenile lives in the employer's household, the employer must provide sufficient meals appropriate to the juvenile's age, as well as accommodation that is in good health and morally acceptable.

#### Art. 33

Repealed

#### Art. 34

Repealed

#### 2. Pregnant women and nursing mothers

#### Art. 35

##### *Maternity health protection*

- 1) The employer shall employ pregnant women and nursing mothers and arrange their working conditions in such a way that their health and the health of the child are not impaired.

2) By ordinance, the employment of pregnant women and nursing mothers for arduous and hazardous work may be prohibited for health reasons or made subject to special conditions.

3) Pregnant women and nursing mothers who are unable to perform certain work due to the provisions of Paragraph 2 are entitled to 80% of their wages, together with appropriate compensation for lost wages in kind, unless the employer can assign them equivalent substitute work.

Art. 35a

*Maternity employment*

1) Pregnant women and nursing mothers may only be employed with their consent.

2) Pregnant women may be absent from work or leave work upon mere notification. Nursing mothers must be given the necessary time off for breastfeeding.

3) Women who have recently given birth may not be employed for eight weeks after the birth.

4) Pregnant women may not be employed between 8 p.m. and 6 a.m. beginning eight weeks prior to delivery.

Art. 35b

*Substitute work and continued payment of wages during maternity*

1) The employer is obliged to offer pregnant women who are employed between 8 p.m. and 6 a.m. equivalent work between 6 a.m. and 8 p.m., if possible, from the eighth week before confinement. This obligation also applies to the rest of the pregnancy and to the period between the eighth and twenty-sixth week after confinement if the employee certifies by a medical certificate that this is necessary for her health or for the health of the child.

2) Women who are employed between 8 p.m. and 6 a.m. shall be entitled to 80% of their wages during the periods specified in paragraph 1, together with appropriate compensation for lost wages in kind, unless they can be offered other equivalent work between 6 a.m. and 8 p.m.

3) More favorable provisions for the women concerned under the provisions of the General Civil Code are reserved. Furthermore, the employer's obligation to continue to pay wages for reasons other than maternity may not be diminished by the above provisions.



4) During the periods referred to in paragraph 1, the woman shall not lose the advantages in terms of her position in the enterprise, seniority and promotion connected with her regular job.

3. Employees with family  
responsibilities Art. 36

1) When determining working hours and rest periods, special consideration shall be given to employees with family obligations. Family obligations include, in particular, the upbringing of children up to the age of 15 and the care of dependants or close relatives.

2) Such employees may be called upon to work overtime only with their consent. At their request, they shall be granted a lunch break of at least one and a half hours.

4. Other groups of employees Art. 36a

By ordinance, the employment of other groups of workers for arduous and hazardous work may be prohibited for health reasons or made subject to special conditions.

V. Operating  
regulations  
Art. 37  
*Lineup*

1) For industrial operations, operating rules shall be established.

2) By ordinance, the establishment of plant regulations may also be prescribed for non-industrial plants, insofar as the nature of the plant or the number of employees justifies this.

3) Other nonindustrial establishments may voluntarily establish operating rules in accordance with the provisions of this section.

4) The company rules shall be agreed in writing between the employer and a representative body freely chosen by the employees or shall be issued by the employer after hearing the employees.

Art. 38  
*Content*

1) The company regulations have provisions on preventive health care and un-

The employer shall establish rules and regulations for the prevention of accidents and, if necessary, for order in the company and the conduct of employees in the company; penalties for disorder shall only be permissible if they are adequately regulated in the company rules.

2) The agreed works regulations may also contain other provisions concerning the relationship between the employer and the employees, but only to the extent that their subject matter is not customarily regulated by collective labor agreement or other collective agreement in the area to which the establishment belongs.

3) The content of the company regulations must not contradict mandatory law and collective labor agreements binding on the employer.

Art. 39

*Approval; effects*

1) The operating regulations require the approval of the Office of National Economy. It grants approval if the operating regulations do not contradict mandatory law.

2) After being announced in the company, the company rules are binding for the employer and for the employees.

VI. Implementation of the law

1. Implementing rules and monitoring

Art. 40

*Regulations*

1) The government shall issue the necessary regulations:

a) in the cases expressly provided for by law;

b) for more detailed description of individual provisions of the Act.

2) The Government is authorized to enact ordinances and implementing provisions for the Federal Law on Labor in Industry, Trade and Commerce of March 13, 1964, in whole or in part by ordinance in Liechtenstein.

3) The recognized employee and employer organizations shall be consulted prior to the issuance of ordinances pursuant to paras. 1 and 2.

Art. 41

*Monitoring*

1) The monitoring of compliance with this Act and the ordinances issued thereunder, as well as the orders based thereon, shall be the responsibility of the Office for

Economics entrusted.

2) The government may call in special technical inspectors or experts for individual technical branches of the supervisory service.

3) Retrieved

#### Art. 41a

##### *Confidentiality*

1) Persons entrusted with or assisting in tasks under this Act shall be obliged to maintain secrecy vis-à-vis third parties about the facts that come to their knowledge in the course of their activities.

2) The authorities and bodies entrusted with the supervision and enforcement of this Act shall support each other in the performance of their duties; they shall provide each other with the necessary information and shall grant access to official files upon request. The facts reported or ascertained in application of this provision shall be subject to the duty of confidentiality pursuant to para. 1.

#### Art. 41b

##### *Processing of personal data*

The Office of National Economy may process or cause to be processed personal data, including health data and personal data relating to criminal convictions and criminal offences, to the extent necessary for the performance of its duties under this Act.

#### Art. 41c

##### *Disclosure of personal data*

1) The Office of National Economy may disclose data pursuant to Art. 41b upon a justified written request:

a) the Office of Health, the Office of Social Services, and the Office of Vocational Education and Counseling, to the extent necessary to fulfill their statutory duties;

b) Courts and criminal investigation authorities, insofar as the investigation of legally relevant facts requires it;

c) insurers, provided that the clarification of an insured risk requires it;

d) the employer, if the ordering of personal measures becomes necessary;

e) Entities entrusted with the maintenance of statistics, provided that these entities have the data

need for the fulfillment of their tasks;

f) other bodies and authorities, insofar as these require the data for the fulfillment of their legal duties;

g) competent authorities and bodies of other EEA Member States and Switzerland, as well as the EFTA Surveillance Authority, in accordance with the rights and obligations arising from state treaty law, in particular EEA law.

2) In order to avert danger to the life or health of employees or third parties, data may be disclosed by way of exception.

3) The disclosure of anonymized data, in particular for planning, statistical or research purposes, is permissible. Art. 27 of the Data Protection Act remains unaffected.

4) The government may provide for disclosure of personal information to agencies or institutions through a retrieval process.

5) The government may regulate the details, in particular the retrieval procedure, by ordinance.

#### Art. 41d

##### *Information and documentation system*

1) The Office of National Economy shall maintain an information or documentation system for the performance of its duties under this Act.

2) The information and documentation systems may also include:

a) health data of individual employees in connection with the medical examinations, risk analyses and expert opinions provided for by this Act and its regulations;

b) personal data on criminal convictions and offenses.

3) The government shall determine the categories of data to be recorded and their retention period as well as the access and processing authorization by ordinance. It regulates the cooperation with the organs involved, the exchange of data and data security.

2. Duties of employers and employees

#### Art. 42

##### *Duty to provide information*

- 1) The employer and the employees are obliged to provide the enforcement and supervisory bodies with the necessary information for the enforcement of the law and regulations.
- 2) The employer shall permit the enforcement and supervisory bodies to enter the plant, to make determinations and to take samples.

#### Art. 43

##### *Directories, reports and other documents*

The employer shall make available to the enforcement and supervisory bodies lists, reports or other documents containing the information required for the enforcement of the Act and the Ordinances. In other respects, Art. 43a applies.

#### Art. 43a

##### *Processing and disclosure of personal data*

- 1) The employer may process personal data, including health data, on employees and third parties and disclose it to the Office of National Economy and other bodies and authorities to the extent necessary to fulfill its obligations under this Act.
- 2) The government shall regulate the details by ordinance.

#### Art. 44

##### *Announcement of the timetable and work permits*

- 1) The employer shall notify the employees of the time schedule and the working time permits issued by posting them on a notice board or by other suitable means.
- 2) An ordinance shall determine which schedules shall be communicated to the Office of National Economy.

#### Art. 45

##### *Participation rights*

- 1) Employees or their representatives in the company shall have the right of co-determination in the following matters:
  - a) in all matters of health protection;
  - b) in the organization of working time and the design of timetables;

c) with regard to the measures provided for night work within the meaning of Art. 17e.

2) The right to a say includes the right to be heard and consulted before the employer makes a decision and to be given reasons for the decision if it does not take into account, or only partially takes into account, the objections of the employees or their representation in the company.

Art. 46

*Permit applications*

1) The employer shall submit applications for the permits provided for in the Act in due time and give reasons for them, as well as enclose the necessary documents.

2) If, in urgent cases, the application for a working time permit cannot be submitted in time, the employer must do so as soon as possible and give reasons for the delay. In unforeseeable cases of minor significance, the subsequent submission of an application may be waived.

3. Administrative rulings and administrative measures Art. 47

*Administrative rulings*

Orders issued pursuant to this Act or an ordinance issued thereunder shall comply with the provisions of the Act on the General Administration of the Land.

Art. 48

*Precautions in case of non-compliance with regulations or orders*

1) If the provisions of the law or an ordinance or an order are not complied with, the competent enforcement authority shall draw the attention of the offender to this and demand compliance with the provisions or order not complied with.

2) If a breach within the meaning of Paragraph 1 also violates a collective bargaining agreement, the competent enforcement authority may take appropriate account of the measures taken by the contracting parties to enforce the collective bargaining agreement.

Art. 49

*Measures of administrative coercion*

1) If a reminder within the meaning of Art. 48 Para. 1 has remained fruitless, the

The competent enforcement authority shall take the measures necessary to bring about the legal

The competent authorities shall take all necessary measures of administrative enforcement within the meaning of the Act on the General Administration of the Republic of Poland.

2) If the life or health of employees or the environment of the establishment is significantly endangered by the failure to comply with an order, the government may, after prior written warning, prevent the use of rooms or facilities and, in particularly serious cases, close the establishment for a certain period of time.

#### Art. 50

##### *Withdrawal and blocking of working time permits*

1) If a working time permit is not complied with, the Office of Economic Affairs may, irrespective of the procedure under Articles 48 and 49, cancel the permit after prior written warning and, if the circumstances so warrant, block the granting of new permits for a certain period of time.

2) If an employer abuses the authority to order overtime work, the Office of Economics may revoke that authority for a specified period of time.

#### Art. 51

##### *View*

The competent enforcement authority is obliged to examine reports of non-compliance with the law, an ordinance or a ruling and, if they are justified, to proceed in accordance with Articles 48 and 49.

#### 3a. Fees Art.

##### *51a Fees*

1) Fees are charged for permits and approvals and other official acts. The Government shall determine the amount thereof by ordinance.

2) The costs for the involvement of third parties will be invoiced separately.

4. Management care

#### Art. 52

##### *Right of appeal*

1) Appeals against decisions and orders of the Office of National Economy may be lodged with the Government within 14 days from the date of notification.

2) Appeals against decisions and orders of the Government may be lodged with the Administrative Court within 14 days of service.

3) In addition to the employers and employees involved, the recognized employee and employer organizations are also entitled to appeal.

5. Penal provisions Art. 53

*Criminal liability of the employer*

1) The employer is liable to prosecution if he violates provisions of the law or an ordinance:

a) on health care and accident prevention intentionally or negligently;

b) on working time and rest periods is intentionally violated;

c) on the special protection of juvenile or female employees intentionally or negligently.

2) If, in the operation of a sole proprietorship, a person entrusted by the employer with the management of the operation is guilty of an offence, that person shall be liable to prosecution. The employer is only liable to prosecution if he is aware of the infringement and fails to prevent it or to take remedial action.

3) If an offence is committed in the business of a legal entity or a trading company, those persons who acted or should have acted on its behalf shall be liable to prosecution. The legal person or the company shall be jointly and severally liable for fines and costs unless it proves that it exercised all due diligence.

has in order to effect compliance by said persons.

Art. 54

*Criminal liability of the employee*

1) An employee is liable to prosecution if he or she intentionally violates the provisions of the law or an ordinance on health care and accident prevention.

2) If the life or health of other persons is thereby significantly endangered, the negligent violation is also punishable.

Art. 55

*Penalties*



- 1) Any person who commits an offence under Articles 53 and 54 of the Act shall be liable to a fine of up to 20,000 francs or, in the case of non-compliance, to imprisonment for a term of up to three months.
- 2) Intentional violation may be punished by the district court in serious misdemeanor cases with imprisonment for up to six months or a fine of up to 360 daily rates. The case is considered serious, in particular, if the offender violates provisions of the law or a regulation:
  - a) and accident prevention, and thereby significantly endangers the life or health of employees or other persons;
  - b) on the special protection of young or female employees.
- 3) If an appropriate penalty has been imposed on the basis of a collective bargaining agreement, the judge may reduce the fine or waive it.

Art. 56

*Reservation of the criminal law*

The provisions of the Criminal Code remain reserved.

Art. 57

*Reservation of regulations*

Reserved in particular:

- a) legislation on professional training, on the prevention of accidents and occupational diseases, and on working and rest time for professional drivers of motor vehicles;
- b) Police regulations, such as those concerning building, fire, health and water police, as well as Sunday rest and the opening hours of businesses that serve retail sales, catering or entertainment.

VII. Final and transitional provisions Art. 58

*Repeal of existing regulations*

- 1) Upon the entry into force of this Act, the Act on Work in Industry and Trade (Workers' Protection Act) of November 29, 1945, shall be repealed, subject to paragraph 2.

2) The following provisions of the Act on Work in Industry and Trade (Workers' Protection Act) of November 29, 1945, shall remain applicable until new provisions are enacted: Art. 1; Art. 13 to 58; Art. 71; Art. 75 para. 1 and 3; Art. 94; Arts. 96 to 99; Arts. 100 to 106; Arts. 109 to 115; and Arts. 117 to 120.

Art. 59

*Regulations remaining in force*

The ordinances hitherto issued on the basis of Section II and Articles 75, 85 and 121 of the Act on Work in Industry and Trade (Workers' Protection Act) of 29 November 1945 shall remain in force as provisions within the scope of Article 40 of the present Act. They may be repealed or amended at any time by ordinance.

Art. 60

*Dispositions remaining in force*

1) Orders made on the basis of previous legislation shall remain in force, subject to para. 2, until corresponding orders are made on the basis of this Act.

2) Working time permits issued under the previous legislation without a time limit shall remain in force until September 30, 1967. Temporary work permits expiring before September 30, 1967, may be extended upon request until that date in accordance with the previous regulations.

Art. 61

*Entry into force*

This Act is declared nonurgent and shall take effect on February 1, 1967.

### III. E-Commerce Act

from April 16, 2003

#### I. General provisions Art. 1

##### *Subject and purpose*

1) This Act regulates the legal framework for certain aspects of electronic business and legal transactions. It regulates in particular:

- a) the authorization of information society services;
- b) the information obligations of service providers;
- c) the conclusion of contracts;
- d) the responsibility of service providers;
- e) the country of origin principle; and
- f) cooperation with other contracting states of the Agreement on the European Economic Area (EEA) in electronic commerce.

2) This Act serves to implement Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain

legal aspects of information society services, in particular electronic commerce, in the Internal Market (EEA Law Compendium: Anh. XI 5h.01).

#### Art. 2

##### *Scope; applicability*

1) This law does not affect taxation and data protection concerns.

2) The provisions on the country of origin principle (Art. 20 to 23) and cooperation with other contracting states to the EEA (Art. 25) are only applicable to the circulation of information society services within the European Economic Area (EEA).

#### Art. 3

##### *Definitions; Designations*

1) For the purposes of this Act means:

- a) "Information Society Service" means any service normally provided for remuneration at a distance by electronic means at the individual request of the recipient,

In particular, the online sale of goods and services, online information offerings, online advertising, electronic search engines and data retrieval options, as well as services that transmit information via an electronic network, provide access to such a network or store a user's information;

b) "Service Provider" means a natural or legal person or other legally responsible entity that provides an Information Society Service;

c) "Established service provider" means a service provider who actually carries out an economic activity by means of a fixed establishment for an indefinite period of time; the existence and use of technical means and technologies required for the provision of the service shall not in itself constitute a permanent establishment of the service provider;

d) "User": a natural or legal person or other entity with legal capacity that uses a service of the Information Society for professional or other purposes, in particular to obtain information or make information accessible;

e) "Consumer" means a natural person acting for purposes that are not part of his or her trade, business or profession;

f) "commercial communication" means advertising and other forms of communication designed to promote, directly or indirectly, the goods, services or image of a company, organization or individual, excluding:

1. Information that provides direct access to the activity of the company, organization or individual, such as, in particular, a domain name or an electronic mail address; and

2. Information about goods, services or the appearance of a company, organization or natural person provided independently and in particular without financial consideration;

g) "Contracting State" means a Contracting State to the EWRA;

h) "coordinated field" means the legislation applicable generally or specifically to information society services and to service providers concerning the taking up and pursuit of such activity, in particular legislation on the qualification and conduct of service providers, on authorization or registration, and on the quality and content of information society services, including that applicable to advertising and to contracts

provisions and on the legal responsibility of service providers.

2) The personal and functional terms used in this Act shall be understood to mean members of the male and female genders.

## II. Authorization of information society services Art. 4

### *Freedom of admission*

1) The commencement and performance of the activities of a service provider shall not require any separate official authorization, permit, approval or concession or any other requirement having the same effect.

2) Legal provisions that regulate the admissibility of taking up or exercising a business, commercial or professional activity and that do not apply specifically and exclusively to information society services or their providers shall remain unaffected.

## III. Information

### requirements

### Art. 5

### *General information*

1) A service provider shall make available to users at all times at least the following information in an easily and directly accessible manner:

a) his name or his company;

b) the geographical address at which he is established;

c) Information that allows users to contact him quickly and directly, including his electronic mail address;

d) if available, the commercial register number;

e) insofar as the activity is subject to official supervision, the supervisory authority responsible for it;

f) in the case of a service provider who is subject to trade or professional regulations, the chamber, professional association or similar institution to which he belongs, the professional title and the contracting state in which it was awarded, as well as a reference to the applicable trade or professional regulations and access to them;

g) if available, the VAT number.

2) Where prices are quoted in information society services, the following shall apply

label them in such a way that an averagely attentive observer can easily read and allocate them. It must be clearly recognizable whether the prices include value added tax and all other charges and surcharges (gross prices) or not. In addition, it must also be indicated whether shipping costs are included.

3) Other information obligations remain unaffected.

#### Art. 6

##### *Information about commercial communication*

1) A service provider shall ensure that a commercial communication that is part of or constitutes an information society service is clear and unambiguous:

a) is recognizable as such;

b) identifies the natural or legal person who commissioned the commercial communication;

c) offers for sales promotion, such as price reductions, bonuses and gifts, are recognizable as such and contain easy access to the conditions for their use; and

d) The website is designed to be easily recognizable as a contest or sweepstakes and to provide easy access to the terms and conditions of participation.

2) Other information obligations for commercial communication as well as legal regulations concerning the admissibility of offers for sales promotion and of contests and sweepstakes remain unaffected.

#### Art. 7

##### *Unsolicited commercial communication*

1) A service provider who permissibly sends commercial communications by electronic mail without the prior consent of the recipient shall ensure that the commercial communication is clearly and unambiguously identifiable as such upon its receipt by the user.

2) The Government may maintain or cause to be maintained registers in which those persons and companies may register free of charge by electronic means who have excluded for themselves the sending of unsolicited communications by electronic mail. It may

provide for exclusive online registration and maintenance. The service providers referred to in paragraph 1 shall observe and regularly update such registers.

consult

3) Legal provisions on the permissibility and impermissibility of the transmission of commercial communications by electronic mail, in particular communications legislation, shall remain unaffected.

4) The civil and criminal liability of a service provider for damages incurred by a user from the transmission of commercial communication by electronic mail shall remain unaffected.

#### Art. 8

##### *Commercial communication for members of regulated professions*

1) For service providers subject to professional regulations, a commercial communication that is part of or constitutes an information society service provided by them is permitted.

2) Regulations under professional law that restrict commercial communication for members of these professions, in particular to safeguard the independence, dignity and honor of the profession, to safeguard professional secrecy and to maintain fair conduct towards clients and other members of the profession, shall remain unaffected.

#### IV. Conclusion of contracts

#### Art. 9

##### *Information at the conclusion of the contract*

1) A service provider shall inform a user in a clear, comprehensible and unambiguous manner about the following before the user makes a contractual statement (offer or acceptance of a contract):

- a) the individual technical steps leading to his contractual declaration and the conclusion of the contract;
- b) the circumstance of whether the text of the contract is stored by the service provider after conclusion of the contract and, if applicable, access to such text of the contract;
- c) the technical means to detect and correct input errors before submitting the contractual declaration; and
- d) the languages in which the contract can be concluded.

2) A service provider shall indicate the voluntary codes of conduct to which it subscribes and the electronic access to those codes.

3) The information obligations under paragraphs 1 and 2 may not be waived to the detriment of consumers. They do not apply to contracts concluded exclusively in the

The contract may be concluded by electronic mail or a comparable individual means of communication.

4) Other information obligations of the service provider remain unaffected.

Art. 10

*Issuance of a contract declaration*

1) A service provider shall provide the user with appropriate, effective and accessible technical means to identify and correct input errors before the user makes a contractual declaration.

2) A service provider shall immediately confirm receipt of an electronic contract declaration to the user electronically.

3) The obligations of the service provider pursuant to paras. 1 and 2 may not be waived to the detriment of consumers. They shall not apply to contracts concluded exclusively by electronic mail or by a comparable means of in-dividual communication.

Art. 11

*Contractual terms and conditions*

A service provider shall make the contractual provisions and general terms and conditions available to the user in such a way that the user can store and pass them on. This obligation cannot be waived to the disadvantage of the user.

Art. 12

*Access of electronic declarations*

Electronic contractual declarations, other legally significant electronic declarations and electronic acknowledgements of receipt shall be deemed to have been received if the party for whom they are intended can retrieve them under normal circumstances. This provision may not be waived to the detriment of consumers.

V. Responsibility of service providers and users Art. 13

*Exclusion of liability in the event of transit*

1) A service provider who transmits information entered by a user in a communications network or provides access to a communications network shall not be responsible for the information transmitted if it:

a) does not initiate the transmission;



- b) does not select the recipient of the information transmitted; and
- c) neither selects nor modifies the information transmitted.

2) The transmission of information and the provision of access within the meaning of subsection 1 shall also include the automatic temporary storage of the transmitted information, provided that such temporary storage serves only to carry out the transmission in the communications network and the information is not stored for longer than is usually required for the transmission.  
is essential.

#### Art. 14

##### *Exclusion of responsibility for search engines*

1) A service provider who provides users with a search engine or other electronic means to search for third-party information is not responsible for the information retrieved, provided that it:

- a) does not initiate the transmission of the requested information;
- b) Does not select the recipient of the requested information; and
- c) neither selects nor modifies the information requested.

2) Par. 1 shall not apply if the person from whom the requested information originates is under the control or supervision of the service provider.

#### Art. 15

##### *Exclusion of responsibility in the case of caching*

A service provider who transmits information entered by a user in a communications network shall not be responsible for automatic, temporary caching that serves only to make the transmission of information on demand by other users more efficient, provided that it:

- a) does not change the information;
- b) respects the conditions of access to the information;
- c) observes the rules for updating information set forth in generally accepted and used industry standards;
- d) Does not interfere with the permissible use of information use data collection technologies specified in generally accepted and used industry standards; and
- e) immediately removes any information stored by him or denies access to it.

to it as soon as it has received actual knowledge that the information has been removed from the network at the original point of transmission or that access to it has been blocked or that a court or administrative authority has ordered the removal or blocking.

Art. 16

*Exclusion of responsibility for storage of third-party content (hosting)*

1) A service provider that stores information entered by a user is not responsible for the information stored on behalf of a user, provided that it:

a) has no actual knowledge of any unlawful activity or information and is not aware of any facts or circumstances from which any unlawful activity or information becomes apparent; or

b) as soon as he/she has obtained such knowledge or awareness and takes immediate action to remove the information or to block access to it.

2) Paragraph 1 shall not apply if the user is under the control or supervision of the service provider.

Art. 17

*Exclusion of responsibility for links*

1) A service provider who opens access to external information by means of an electronic link is not responsible for this information:

a) if he has no actual knowledge of any unlawful activity or information and is not aware of any facts or circumstances from which any unlawful activity or information would be apparent with respect to claims for damages; or

b) as soon as it has obtained such knowledge or awareness and acts promptly to remove the electronic reference.

2) Par. 1 shall not apply if:

a) the person from whom the information originates is under the control of, supervised by, or has a business relationship with the service provider; or

b) the service provider presents the third-party information as its own or integrates it into its offer.

Art. 18

*Scope of the obligations of service providers*

1) The service providers mentioned in Art. 13 to 17 are not obligated to monitor the information they have stored, transmitted or made available to the public or to investigate circumstances that indicate illegal activities.

2) The service providers referred to in Articles 13 and 16 shall, upon the order of a domestic court authorized by law to do so, provide the court with all information on the basis of which the users of their service with whom they have entered into agreements on the transmission or storage of information may be used for the prevention, investigation, detection, and prosecution of such users.

The data can be used for the investigation, clarification or prosecution of criminal acts.

3) The service providers referred to in Article 16 shall, upon the order of an administrative authority, provide the latter with the names and addresses of the users of their service with whom they have concluded agreements on the storage of information, provided that the knowledge of such information constitutes an essential prerequisite for the performance of the tasks entrusted to such authorities.

4) The service providers referred to in Art. 16 shall disclose the name and address of a user of their service with whom they have concluded agreements on the storage of information to third parties upon request, provided that the third parties have an overriding legal interest in establishing the identity of a user and a specific unlawful circumstance, and furthermore credibly demonstrate that knowledge of this information constitutes an essential prerequisite for legal prosecution.

5) Other obligations of the service providers to provide information and cooperate with authorities or courts remain unaffected.

#### Art. 19

##### *More extensive regulations*

1) Articles 13 to 18 are without prejudice to statutory provisions according to which the court or an authority may order the service provider to cease, remedy or prevent an infringement.

2) Par. 1 and Articles 13 to 18 shall also apply to service providers who provide electronic services free of charge.

#### Art. 19a

##### *Responsibility of the user*

Without prejudice to any further civil or criminal liability, the User shall be liable to the Service Provider for any damage caused to the Service Provider by the misuse of its information society service.

VI. Country of origin principle and  
exceptions Art. 20

*Country of origin principle*

1) In the coordinated area (Art. 3(h)), the legal requirements for a service provider established in a contracting state are governed by the law of that state.

2) The free movement of information society services from another Contracting State may not be restricted on the basis of domestic legislation falling within the coordinated field, subject to Articles 21 to 23.

Art. 21

*Exceptions to the country of origin principle*

The country of origin principle does not apply in the following areas:

- a) Concerns of copyright and related rights, design law as well as topography protection;
- b) the issuance of electronic money by institutions to which the Contracting States have applied one of the exceptions provided for in Article 8(1) of Directive 2000/46/EC (EEA Supplementary Act: Annex IX 15.01);
- c) Legislation on the advertising of mutual funds and other collective investment undertakings of securities in the State of distribution;
- d) the provisions of Art. 30 and Title IV of Directive 92/49/EEC (EEA Collection of Acts: Annex IX 7a.01), as amended, in Title IV of Directive 92/96/EEC (EEA Supplement: Annex IX 12.02), as amended, in Articles 7 and 8 of Directive 88/357/EEC (EEA Supplement: Annex IX 7.01), as amended, and in Article 4 of Directive 90/619/EEC (EEA Supplement: Annex IX 12.01), as amended, on the obligations of insurance undertakings to submit the conditions for compulsory insurance to the competent supervisory authority, on the freedom of establishment and the freedom to provide services for insurance undertakings in the European Economic Area and on the applicable law in non-life insurance matters.  
and life insurance contracts covering risks located in a contracting state;

- e) the freedom of the parties to a contract to choose the law;
- f) contractual obligations relating to consumer contracts, including statutory information obligations, which have a determining influence on the decision to conclude a contract;
- g) the legal validity of contracts for the creation or transfer of rights to real estate, provided that such contracts are subject to mandatory formal requirements under the law of the Contracting State in which the real estate is located;
- h) the permissibility of unsolicited advertising and other measures to promote sales by electronic mail;
- i) the activity of notaries and the activity of members of equivalent professions, insofar as they exercise powers under public law;
- k) representing a party and defending its interests in court;
- l) Games of chance and gambling that involve wagering a stake representing a monetary value, including lotteries and betting.

#### Art. 22

##### *Deviations from the country of origin principle*

- 1) The court or an administrative authority may, within the scope of its legal powers and by way of derogation from the country of origin principle, take measures restricting the free movement of information society services from another contracting state. However, such measures must be necessary to protect one of the legal interests mentioned in paragraph 2. They may only be directed against a service provider who impairs or seriously and gravely threatens to impair one of these legal interests. They must also be proportionate to the objectives pursued thereby.
- 2) The free movement of information society services from another Contracting State may be restricted only for the following reasons:
- a) Protection of public order, in particular for the prevention, investigation, clarification or prosecution of criminal acts, including the protection of minors and the fight against incitement on grounds of race, sex, creed or nationality;
  - b) Protection of human dignity;
  - c) Public Health Protection;

- d) Protection of public safety, including the safeguarding of national security interests; and
- e) Consumer protection including investor protection.

Art. 23

*Obligation to notify*

- 1) An administrative authority shall notify the EFTA Surveillance Authority and the competent authority of the other State of its intention to take measures restricting the free movement of information society services from another Contracting State and request them to take appropriate measures against the service provider. The authority may only implement the measures it intends to take if the competent authority of the other contracting state has not complied with this request within a reasonable period of time or if the measures it has taken are inadequate.
- 2) In case of imminent danger, the Authority may adopt the measures it intends to take even without notifying the EFTA Surveillance Authority and requesting the competent authority of the other Contracting State. In this case, it must immediately notify the EFTA Surveillance Authority and the competent body of the measure it has taken, stating the reasons for its assumption of imminent danger.
- 3) Paragraphs 1 and 2 shall not apply to judicial proceedings.

VII. Transparency and liaison with other Contracting States

Art. 24

*Transparency*

- 1) The government or an official body appointed by it must notify the EFTA Surveillance Authority of significant judicial or administrative decisions relating to information society services.  

to be disclosed.
- 2) The government or an office authorized by it shall publish on the Internet information on:
  - a) the contractual rights and obligations of users, and on the complaint and redress procedures available in the event of disputes, including the practical aspects of these procedures; and
  - b) the addresses of public authorities, public bodies and other bodies from which users or service providers can obtain further information or

can receive practical support.

Art. 25

*Liaison*

- 1) The Government or an official agency delegated by it shall co-operate as a liaison agency with the competent agencies of other Contracting States and with the Standing Committee. It shall comply with requests for information from other Contracting States and from the Standing Committee and shall forward to the competent courts or administrative authorities requests for administrative or judicial assistance or information which do not fall within its sphere of activity.
- 2) The Authority shall publish on the Internet the addresses of the liaison offices of other Contracting States notified to it.

VIII. Penal provisions

Art. 26

*Transgressions*

1) A service provider is liable to a fine of up to 10,000 Swiss francs from the Office of National Economy for an infringement if:

- a) violates its general information obligations pursuant to Art. 5 Par. 1;
- b) violates its information obligations for commercial communication pursuant to Art. 6;
- c) violates the duty to consult pursuant to Art. 7 Para. 2;
- d) violates its duty to provide information for the conclusion of contracts pursuant to Art. 9 par. 1 or fails to provide an electronic  
Indicates access to the voluntary codes of conduct to which it subscribes;
- e) contrary to Art. 10 Para. 1, does not provide technical means for the detection and correction of input errors; or
- f) contrary to Art. 11, does not make the contractual provisions and general terms and conditions available in such a way that the User can store and reproduce them.

2) An infringement under subsection 1 shall not be deemed to have been committed if the act constitutes a judicially punishable act or is punishable by a more severe penalty under other administrative penal provisions.

Art. 27

*Active repentance*

- 1) The Office of National Economy may draw the attention of a service provider who violates the obligations under this Act to the fact and order him to restore the lawful state within a reasonable period of time determined by it. In doing so, it shall draw the service provider's attention to the legal consequences of such a request.
- 2) A service provider shall not be penalized for an infringement under Art. 26 Para. 1 if it restores the lawful state within the period set by the Office for National Economy.

IX. Final provision Art.

28

*Entry into force*

This Act shall enter into force on the day of its promulgation.



## **IV. Remote Financial Services Act**

from December 15, 2004

### **I. General provisions Art. 1**

#### *Purpose*

This Act serves to implement Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (EEA Supplementary Act: Annex IX 30d.01).

#### **Art. 2**

#### *Scope*

This law applies to distance contracts for financial services between an entrepreneur and a consumer (Art. 1 Consumer Protection Act; KSchG).

#### **Art. 3**

#### *Limitation of the scope*

- 1) In the case of contracts for financial services comprising a basic agreement followed by successive services or a successive series of services of the same type, the provisions of this Act shall apply only to the basic agreement.
- 2) If the contracting parties have not concluded a basic agreement, but successive or separate services of the same kind are provided between them, the information obligations of Articles 5 and 6 shall apply only to the first service. However, if no service of the same kind is provided for more than one year, these information obligations shall apply to the next service.

#### **Art. 4**

#### *Definitions; Designations*

- 1) For the purposes of this Act mean:
  - a) Distance contract: a contract concluded with the exclusive use of a

or more means of distance communication within the framework of a sales or service system of the Entrepreneur organized for distance selling;

b) Financial service: any banking service as well as any service in connection with the granting of credit, insurance, pension provision for individuals, investment or payment;

c) Means of distance communication: any means of communication that can be used for the distance delivery of a service between the parties without the simultaneous physical presence of the Entrepreneur and the Consumer;

d) durable medium: any medium which enables the recipient to store information addressed personally to him/her in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the stored information.

2) The personal and functional terms used in this Act shall be understood to mean members of the male and female genders.

## II. Information

requirements

### Art. 5

#### *Sales information*

1) The consumer must be provided with the following information, the business purpose of which must be unambiguously recognizable, in a clear and comprehensible manner adapted to the means of distance communication used, in good time before submitting his contractual declaration (offer or acceptance):

a) about the entrepreneur:

1. Name (company name) and main business activity of the entrepreneur, the address of its branch office and any other address relevant for the business relationship between the contracting parties;

2. Name (company name) of any representative of the trader with registered office in the country in which the consumer is domiciled, as well as the address relevant for the business relationship between the consumer and this representative;

3. if the consumer is to have a business relationship with a person other than the entrepreneur, the name (company) of that person, the capacity in which he/she acts towards the consumer and the address used for the business relationship between the consumer and that person.

is decisive;

4. if the entrepreneur is registered in the Commercial Register or a comparable foreign public register, the number in the Commercial Register or the comparable foreign public register or an equivalent identifier used in these registers;

5. if an authorization is required for the entrepreneur's activity, the name and address of the competent supervisory authority;

b) about the financial service:

1. a description of the essential characteristics of the financial service;

2. the total price owed by the consumer to the entrepreneur for the financial service, including all related commissions, fees and charges, and all taxes paid through the entrepreneur, or, if no exact price is available

can be specified, the basis for its calculation, which allows the consumer to verify the price;

3. where applicable, an indication that the financial service relates to financial instruments which, because of their specific characteristics or the operations to be carried out, are subject to specific risks or whose price is subject to fluctuations in the financial market over which the entrepreneur has no control, and an indication that past earnings are not indicative of future earnings;

4. an indication of any other taxes or costs that are not paid by the Contractor or invoiced by the Contractor;

5. any limitation of the period during which the information provided is valid;

6. Details of payment and performance; and

7. any special additional costs to be borne by the consumer for the use of the means of distance communication, if such additional costs are charged;

c) on the distance contract:

1. The existence or non-existence of a right of withdrawal pursuant to Art. 8, the withdrawal period and modalities for exercising it, including the amount that the consumer may have to pay pursuant to Art. 12, as well as the consequences of non-exercise of the right;

2. the minimum term of the contract if it involves the provision of a continuous or regularly recurring financial service;
3. Information on the right of the parties to terminate the contract based on the terms of the contract, including any penalties or other charges imposed in such a case;
4. practical instructions on how to exercise the right of withdrawal, including the address to which the notice of withdrawal must be sent;
5. the law on which the entrepreneur bases the establishment of relations with the consumer prior to the conclusion of the contract;
6. intended contractual agreements on the law applicable to the contract and on jurisdiction; and
7. Indication of the languages in which the information and contractual terms and conditions will be communicated, as well as the languages in which the information and contractual terms and conditions will be communicated.

the entrepreneur promises to use for communication with the consumer with the consumer's consent during the term of the contract;

d) on legal remedies:

1. Information about the consumer's access to out-of-court complaint or arbitration procedures, and the requirements for such access; and
  2. Information on the existence of a guarantee fund or other compensation schemes not covered by the Deposit Guarantee and Investor Compensation Act.
- 2) The information referred to in paragraph 1 shall be in accordance with the law applicable to the contract at the time of its conclusion.
- 3) Paragraph 1(a), (b)(1) and (2), (c)(2), (3), (6) and (7) and (d)(1) shall not apply to payment services within the meaning of the Payment Services Act.

## Art. 6

### *Information during long-distance calls with consumers*

- 1) In the case of long-distance calls to consumers, the name or company of the subscriber and the business purpose of a call initiated by the subscriber must be clearly and understandably disclosed at the beginning of each call.
- 2) Provided that the consumer has expressly consented to this, in the case of long-distance calls only the following information must be provided to the consumer in good time before the consumer submits his or her contractual clarification (Art. 5):

- a) Name (company) of the consumer's contact person and their connection to the entrepreneur;
  - b) Description of the main features of the financial service;
  - c) Total price owed by the consumer to the entrepreneur for the financial service, including all related commissions, fees and charges, as well as all taxes paid through the entrepreneur, or, if no exact price can be given, the basis for its calculation, which allows the consumer to verify the price;
  - d) an indication of any other taxes or costs that are not paid through or charged by the contractor; and
  - e) The existence or non-existence of a right of withdrawal in accordance with Art. 8, as well as the period and modalities for exercising it, including the amount that the consumer may have to pay in accordance with Art. 12.
- 3) In the case of long-distance calls, the consumer shall also be informed that further information may be provided upon request and of the nature of such information. In any case, the entrepreneur shall provide all information if he fulfills his obligation under Art. 7.
- 4) Other information obligations remain unaffected.

#### Art. 7

##### *Transmission of the contract conditions and sales information*

- 1) The entrepreneur shall provide the consumer with all the terms and conditions of the contract as well as the information referred to in Art. 5 in paper form or on another durable medium to which the consumer has access and which is available to him in good time before he submits his contractual declaration.
- 2) If the contract was concluded at the consumer's request by means of a means of distance communication that does not permit the presentation of the contractual terms and conditions and information under para. 1, the entrepreneur shall comply with the obligation under para. 1 without undue delay after the conclusion of the distance contract.
- 3) At any time during the contractual relationship, the consumer may request the presentation of the contractual terms and conditions in paper form. He is also entitled to use another means of distance communication, unless this is incompatible with the contract concluded or the nature of the financial service provided.

#### III. Withdrawal from the contract

Art. 8

*Principle*

- 1) The consumer may withdraw from the contract or from his contractual declaration until the expiry of the time limits specified in paragraph 2.
- 2) The withdrawal period is 14 days for life insurance within the meaning of Directive 2002/83/EC on life insurance (EEA Corp.: Annex IX 11.01) and 30 days for distance contracts on pensions for individuals. In any case, the time limit is met if the withdrawal is declared in writing or on another durable medium available and accessible to the recipient and this declaration is lowered before the expiry of the time limit.
- 3) The withdrawal period begins on the day the contract is concluded. In the case of life insurance (para. 2), the period begins on the date on which the consumer is informed of the conclusion of the contract.
- 4) If the consumer has received the contractual conditions and sales information only after the conclusion of the contract, the withdrawal period begins with the receipt of all these conditions and information.
- 5) Within the withdrawal period, the fulfillment of the contract may only be started after the express consent of the consumer.

Art. 9

*Economic entity*

If, in connection with a distance contract for a financial service, the consumer has concluded another distance contract for services provided by the entrepreneur or a third party on the basis of an agreement between the third party and the entrepreneur, the withdrawal from the contract for the financial service shall also apply to this additional contract.

Art. 10

*Exceptions to the right of withdrawal*

The consumer has no right of withdrawal in the case of:

- a) Contracts for financial services, the price of which is subject to fluctuations on the financial market over which the entrepreneur has no control and which may occur in- ner the withdrawal period, in particular for services related to:
  1. Foreign exchange;

2. money market instruments;
  3. tradable securities;
  4. shares in investment companies;
  5. financial forward contracts (futures) including equivalent instruments with cash payment;
  6. Forward Interest Rate Agreements (FRA);
  7. interest rate and foreign exchange swaps and equity or equity index-based swaps ("equity swaps"); and
  8. Call or put options on all instruments listed in items 1 to 7, including equivalent instruments with cash payment, such as in particular currency and interest rate options;
- b) contracts for travel and baggage insurance or similar short-term insurance with a term of less than one month; and
- c) contracts which, with the express consent of the consumer, have already been fully performed by both parties before the consumer exercises his right of withdrawal.

#### Art. 11

##### *Credit agreements*

Articles 8 to 10 shall not apply to credit agreements terminated pursuant to Article 18 of the Distance and Expatriate Transactions Act or Article 8 of the Timeshare Act.

#### Art. 12

##### *Consequences of the withdrawal*

1) If the consumer withdraws from the contract in accordance with Art. 8, the entrepreneur may demand from him immediate payment of the remuneration for the services actually already provided in accordance with the contract. The amount to be paid shall not be higher than the proportion of the services already provided in relation to the total scope of the contractually agreed services.

the services provided. The Entrepreneur may only demand payment of this fee if he has fulfilled the obligation to provide information pursuant to Art. 5 Para. 1 c No. 1 and if the Consumer has expressly consented to the commencement of performance of the contract before the end of the withdrawal period.

2) If the consumer withdraws from the contract in accordance with Art. 8:

a) the Entrepreneur shall notify the Consumer without undue delay, but within 30 days at the latest.

The customer is obliged to reimburse to the supplier, from the date of receipt of the notice of withdrawal, any amount received from the supplier in accordance with the contract, less the amount referred to in paragraph 1;

b) the consumer shall immediately, but no later than within 30 days from the date of sending the notice of withdrawal, return to the entrepreneur any sums of money and objects received from the entrepreneur.

IV. Special provisions Art. 13

*Indispensability*

If agreements deviate from this law to the detriment of the consumer, they are invalid.

Art. 14

*Procedural provisions*

Articles 9 to 16 of the Unfair Competition Act shall apply mutatis mutandis.

V. Final provision Art.

15

*Entry into force*

This Act shall enter into force on June 1, 2005. It does not apply to contracts concluded before that date.



## V. Trade Law

from 30 September 2020

### I. General provisions Art. 1

#### *Subject and purpose*

- 1) This Act lays down the framework conditions for the exercise of commercial activities in compliance with the freedom of trade and commerce and defines the minimum requirements for the exercise of commercial activities for the protection of the public.
- 2) It is intended to ensure that the competitiveness of Liechtenstein trade and industry is maintained and strengthened by ensuring a high standard of quality.
- 3) It also serves to implement the following EEA legislation:
  - a) Directive 2005/36/EC on the recognition of professional qualifications;
  - b) Directive 2006/123/EC on services in the internal market;
  - c) Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
- 4) The valid version of the EEA legislation referred to in par. 3 above shall be derived from the promulgation of the decisions of the EEA Joint Committee.

Committee in the Liechtenstein Law Gazette in accordance with Art. 3(k) of the Public Disclosure Act.

#### Art. 2

##### *Scope*

- 1) Subject to Art. 3, this Act shall apply to all activities carried on commercially within the country and not prohibited by law.
- 2) An activity is considered to be commercial if it is carried out independently, regularly and with the intention of generating income or other economic benefit, irrespective of the purpose for which it is intended.
- 3) Self-employment within the meaning of this Act is deemed to exist if the activity is carried out on one's own account and at one's own risk.
- 4) A regular activity is also considered to be a one-time action if, according to the

circumstances of the case, the intention of repetition can be inferred or if it requires longer time.

5) In the case of an association, the intention to obtain a profit or other economic advantage is present if its commercial activity has the appearance of a commercial enterprise and this activity is

- is aimed directly or indirectly at obtaining a pecuniary advantage for the association or its members, regardless of the purpose for which the income or other economic advantage is intended.

### Art. 3

#### *Exceptions from the scope*

1) This Act shall not apply to:

- a) agricultural production including the sale of agricultural products and para-agricultural activities;
- b) the artistic and scientific activity and the self-publishing right of the authors;
- c) the publication of newspapers and magazines;
- d) the commercial work of non-profit workshops within the framework of assistance for the disabled;
- e) the pursuit of the gainful branches of private instruction and education and the operation of those institutions which serve these functions, as well as the commercial work of private schools or private schools endowed with the right of publicity;
- f) the operation of theaters and shows of all kinds as well as public entertainments;
- g) branches of gainful activity which, according to their nature and mode of operation, fall into the category of secondary domestic occupations and are carried on by ordinary members of their own households;
- h) the performance of work of a very simple nature for hourly or daily wages or for compensation for work;
- i) professional activity as a professional athlete;
- k) the commercial activity of associations, insofar as:
  - 1. the commercial activity serves to realize idealistic purposes;

- 
2. the commercial activity is of minor importance compared to the non-material activity; and
3. whose turnover does not exceed 150,000 francs per year for two consecutive years.
- 2) It does not apply to professional activities whose authorization is regulated by other laws. These are in particular:
- a) the activities under the Agriculture Act;
  - b) activities under the Medical Act, the Public Health Act, the Animal Health Professions Act and the Narcotics Act, as well as trade in medicinal products, raw materials for medicinal products and poisons;
  - c) activities under the Lawyers Act, the Patent Attorneys Act, the Trustees Act, the Auditors Act, the Act on the Supervision of Persons under Art. 180a of the Persons and Companies Act and the Notaries Act;
  - d) the activities under the Construction Professions Act;
  - e) The activities of banks and investment firms, electronic money institutions, insurance companies, pawnbrokers, undertakings for collective investment in transferable securities and their management companies, investment undertakings and their management companies, alternative investment funds and their managers (AIFM), and other entities authorized under the AIFM Act.  
business partners, asset management companies, insurance intermediaries, reinsurance intermediaries and insurance intermediaries acting on a sideline basis, payment service providers, service providers for legal entities, pension funds and institutions for occupational retirement provision;
  - f) activities under the Act on Trade in Goods in Circulation;
  - g) private employment agencies and personnel leasing in accordance with the Employment Agency Act;
  - h) the activities of railroad undertakings under the Railway Act and air carriers under the Aviation Act;
  - i) the activities of mediators under the Civil Law Mediation Act;
  - k) the activities of road transport companies under the Road Transport Act and the Passenger Transport Act;
  - l) the trade in and manufacture of weapons and ammunition, and the operation of

of shooting ranges;

- m) the conduct of money games in accordance with the Money Games Act;
  - n) the activities of collecting societies and dependent and independent collecting societies under the Collecting Societies Act;
  - o) the activities of out-of-home care and nursing of children and juveniles in accordance with the Children and Youth Act;
  - p) the provision of electronic communications networks and the provision of electronic communications services in accordance with the Communications Act;
  - q) activities under the Electricity Market Act and the Gas Market Act;
  - r) activities under the Law on the Licensing of Interpreters and Translators before Liechtenstein courts and administrative authorities;
  - s) The activities of VT service providers under the Token and VT Service Providers Act;
  - t) the activity of credit intermediaries under the Mortgage and Real Estate Credit Act.
- 3) It does not apply to commercial activities that are directly related to a legally defined activity.

Corporate purpose of a public company under the Public Enterprise Steering Act.

- 4) It does not apply to the following hospitality activities:
- a) serving and serving of food and beverages determined by prescription:
    1. in cultural, sports, youth, recreational, senior citizen and church centers; the operating time shall be limited according to the activity of the individual centers;
    2. in the alpine farms operated by the citizens' or alpine cooperatives as well as in the huts of the Liechtenstein Alpine Club in the alpine region;
    3. in simple forms of operation in the immediate vicinity of facilities for the practice of winter sports activities, especially in the skiing area of Malbun and Steg, whereby the operating hours are largely linked to the operating hours of the ski lifts or to the times when cross-country skiing is practiced;
    4. within the scope of a para-agricultural activity pursuant to subparagraph 1(a);
    5. within the framework of a commercial activity of associations according to par. 1 letter k;

b) the accommodation of a maximum of eight guests, and the handing over of the breakfast to them is also allowed.

#### Art. 4

##### *Designations*

The designations of persons, professions and functions used in this Act shall be understood to mean members of the male and female sexes.

#### II. Classification of trades

#### Art. 5

##### *Qualified and simple trades*

1) Qualified trades are trades for which, due to a special need for protection, proof of professional suitability

(Art. 15) must be provided. All other trades are simple trades.

2) The government shall determine the qualified trades by decree after consulting the professional associations and business associations.

#### Art. 6

##### *Associated trades*

1) Associated trades are trades which consist of at least two individual qualified trades and which are comparable due to their use of tools and machines as well as the type of work to be performed and the necessary expertise.

2) A person who proves professional qualification (Art. 15) for a single qualified trade belonging to an associated trade is entitled to practice all individual qualified trades belonging to the associated trade.

3) The government shall determine the associated trades by decree after consulting the professional associations and business associations.

#### Art. 7

##### *Industrial companies*

A trade is carried out in the form of an industrial enterprise if the enterprise:

a) employs at least fifty employees;

b) Uses a variety of machinery and technical equipment; and

c) carries out activities that cannot be classified as craft, trade or service activities.

III. Trade practice with branch office

A. Business license

Art. 8

*Principle*

- 1) The right to exercise a trade (trade license) is a personal right that cannot be transferred.
- 2) The purpose of the trade describes the activity actually performed and the scope of the trade license.

Art. 9

*Registration requirement*

- 1) Simple trades are subject to registration. Art. 10 remains reserved.
- 2) The trade license shall come into existence upon fulfillment of the requirements for the exercise of the trade upon registration pursuant to Art. 20.

Art. 10

*Authorization requirement*

- 1) Trades for which the professional qualification or reliability must be checked before commencing the activity due to a special need for protection are subject to licensing.
- 2) The trade license shall come into existence upon issuance of the license under Art. 21.
- 3) The government shall determine the trades subject to licensing by ordinance.

B. Exercise requirements Art. 11

*Principle*

- 1) Natural persons obtain a trade license if they:
  - a) are capable of acting;
  - b) are reliable (Art. 12 and 14);
  - c) are nationals of an EEA member state or Switzerland, their descended family members, life partners or other beneficiaries within the meaning of the Act on the Free Movement of Persons or third-country nationals with a permanent, uninterrupted residence of at least five years in Switzerland;
  - d) for qualified trades, have the professional qualification (Art. 15);

- e) have a domestic permanent establishment (Art. 16);
  - f) designate a domestic address for service; and
  - g) prove that the business purpose is shown in the commercial register entry.
- 2) Legal entities with legal capacity, as well as general and limited partnerships, obtain a trade license if they:
- a) meet the requirements of paragraph 1 letters b, e, f and g;
  - b) appoint a managing director (Art. 17) and, if necessary, an operations manager (Art. 18); and
  - c) have a domestic branch office if they are foreign legal entities or general and limited partnerships.
- 3) For trades carried out in the form of an industrial enterprise, no proof of professional qualification is required.

*Reliability*

Art. 12

*a) Reasons for exclusion*

- 1) Natural persons are excluded from engaging in commercial activity if they:
- a) have been convicted by a court of law of fraudulent concealment, damaging another's creditors, favoring a creditor or grossly negligent impairment of a creditor's interests (Sections 156 to 159 of the Criminal Code) or have been sentenced to a term of imprisonment exceeding three months or to a fine of more than 180 daily rates for any other offense and the conviction has not been expunged;
  - b) have been fruitlessly attached; or
  - c) have been punished for a serious or repeated violation of statutory provisions, in particular under the Unfair Competition Act, the Consumer Protection Act or the Due Diligence Act, the violation is related to the exercise of a commercial activity and the punishment does not date back more than five years.
- 2) Legal entities are excluded from engaging in commercial activity if:
- a) they have been sentenced by a court in accordance with §§ 74a et seq. of the Criminal Code to a fine of more than 20 daily penalty units and the sentence

does not date back more than five years;

b) the insolvency proceedings have not been opened with final effect for lack of assets to cover costs; or

c) an infringement according to paragraph 1 letter c has occurred.

3) In the case of paragraph 2(b), limited partnerships and general partnerships are excluded from carrying on commercial activities.

4) The grounds for exclusion under paras. 1 to 3 shall also apply if an act comparable to the ground for exclusion cited has been committed abroad.

Art. 13

*b) Indulgence*

The Office of National Economy may, upon request, grant leniency from an exclusion under Article 12 if:

a) according to the nature of the criminal act and the personality of the convicted person, the commission of the same or a similar criminal act is not to be feared when exercising the commercial activity; or

b) based on the applicant's economic situation, it can be expected that he/she will meet the payment obligations associated with the exercise of the professional activity.

Art. 14

*c) Package tours*

Applicants who wish to organize package tours or arrange related travel services are considered reliable, subject to Art. 12,

if they have insolvency insurance in accordance with the Package Travel Act.

Art. 15

*Professional suitability*

1) The professional aptitude for the practice of a qualified trade is given if knowledge and skills are demonstrated on the basis of specific training and practical experience that enable the person to practice the corresponding trade.

2) The government shall regulate the details of the required education and practical experience for the individual qualified trades as well as the recognition of foreign professional qualifications and certificates of competency with ordinance.



## Art. 16

*Operating site*

- 1) For the exercise of a commercial activity, a permanent establishment located in Germany must be proven.
- 2) The business premises must be designed in accordance with the purpose of the business and must have suitable premises for carrying out the activities necessarily connected therewith.
- 3) It is permissible to manage several operating sites.
- 4) The government may, by ordinance, define in more detail the requirements for the premises of individual trades.

## Art. 17

*Managing Director*

- 1) Subject to Art. 18, the managing director is responsible to the trade licensee for the proper conduct of the trade and to the authorities for compliance with the provisions of trade law and other regulations relevant to the conduct of the trade.
- 2) The manager must:
  - a) meet the requirements of Art. 11 Para. 1 Letters a to d; subject to Art. 18;
  - b) be actually and managerially active in the company and, in particular, actually work at the business premises with a workload corresponding to the requirements of the business;
  - c) have self-responsible authority to issue instructions within the company; this includes a right to sign entered in the Commercial Register and comprehensive authority to issue instructions;
  - d) be a member of the governing body of the legal entity or general or limited partnership appointed to legally represent it, or be an employee in a permanent employment relationship.
- 3) When examining the requirements pursuant to para. 2, the extent of the operational and other obligations as well as the place of residence of the managing director shall be taken into account.
- 4) If several natural persons act as managing directors, then:

- a) each managing director meets the requirements of Art. 11 Para. 1 Letters a to c; and
- b) at least one managing director fulfills the requirement pursuant to Art. 11 para. 1 subpara. d; Art. 18 remains reserved.

Art. 18

*Operations Manager*

- 1) If the person entitled to exercise the trade or the managing director does not meet the requirements of Art. 11(1)(d), an operations manager must be appointed. The manager shall be responsible to the person entitled to exercise the trade and the managing director for the proper conduct of the trade.
- 2) The operation manager must comply:
  - a) the requirements according to Art. 17 Para. 2 Letters a and d; and
  - b) with regard to the subject-specific management, the requirements according to Art. 17 Para. 2 Letters b and c.
- 3) Art. 17 Para. 3 shall apply *mutatis mutandis*.

Art. 19

*Economically entitled persons*

If the trade licensee becomes subject to due diligence pursuant to Art. 3 Para. 1 Letters n, p and q of the Due Diligence Act, he or she must notify the Office of the People's

economy must prove the reliability of the qualified beneficial owners involved.

C. Procedure Art. 20

*Trades subject to registration*

- 1) Simple trades must be registered with the Office of Economic Affairs. Art. 10 remains reserved.
- 2) The application must be accompanied by the required supporting documents, in particular:
  - a) the documents required to prove the exercise requirements;
  - b) a precise description of the purpose of the trade;
  - c) the proof of payment of the fee.
- 3) The trade may be exercised with the registration if the prerequisites for exercising the trade are met.
- 4) The Office of National Economy shall examine without delay, and at the latest within three

months after receipt of the complete application, whether the exercise prerequisites are met.

5) If the requirements for exercising the trade are fulfilled, the Office of National Economy makes the entry in the Trade Register and sends the trade licensee an extract from the Trade Register.

6) If the conditions for exercising the right are not met, the Office of National Economy shall issue a ruling to that effect and take the necessary measures. A procedure according to Art. 44 remains reserved.

#### Art. 21

##### *Trades requiring a permit*

1) Anyone wishing to carry on a trade under Art. 10 shall submit an application for a permit to the Office of National Economy.

2) The application shall be accompanied by the required supporting documents, in particular:

- a) the documents required to prove the exercise requirements;
- b) a precise description of the purpose of the trade;
- c) the proof of payment of the fee.

3) The Office of Economic Affairs will examine whether the conditions for exercising the right are met without delay, at the latest within three months of receipt of the complete application. The decision period begins with the receipt of the complete application. If necessary, the applicant must be informed of the incompleteness of the application and the resulting legal consequences.

4) The decision deadline may be reasonably extended once if this is necessary due to the difficulty of the matter. The extension of the deadline must be justified and communicated before expiry of the decision deadline.

5) The Office of National Economy will issue an acknowledgement of receipt immediately upon receipt of the complete application, which will contain the following information in particular:

- a) the decision deadline;
- b) the legal remedies or appeals;
- c) the legal consequences, if any.

6) If the requirements for exercising the trade are met, the Office of Economic Affairs must immediately issue the permit, make the entry in the trade register and issue the person entitled to exercise the trade with an extract from the trade register.

to be submitted. Otherwise, the application shall be rejected.

7) The trade license shall be deemed to have been granted if the Office of National Economy fails to take a decision within the period specified by paras. 3 and 4.

8) Paragraphs 3 to 5 and 7 apply only to commercial activities that fall within the scope of Directive 2006/123/EC.

#### Art. 22

##### *Facilitation for EEA nationals and legal entities established in the EEA*

1) EEA nationals who are legally established in an EEA member state and who carry out commercial activities there that fall within the scope of application of Directive 2006/123/EC are exempt from proving the exercise requirements under this Act insofar as they:

- a) are authorized in one of these states to take up and pursue a professional activity under this Act; and
- b) have undergone a procedure to obtain this authorization, the requirements of which correspond to those of this Act or are essentially comparable with them due to their objectives.

2) The provisions of para. 1 also apply to legal entities within the meaning of Art. 34 of the EEA Agreement which are established under the laws of an EEA Member State and have their registered office, central administration or principal place of business in an EEA Member State. If the legal entities only have their registered office in an EEA Member State, their activities must have a real and continuous link with the economy of an EEA Member State.

#### D. Reporting obligations Art. 23

##### *Principle*

1) The trade licensee or manager shall immediately notify the Office of National Economy in writing if:

- a) the conditions that led to obtaining the trade license subsequently change;
- b) the trade has not been practiced for an uninterrupted period of at least two years;
- c) an additional operating facility is managed;

d) the business license is suspended in accordance with Art. 24 or the business activity is resumed.

2) The procedural provisions under Art. 20 et seq. shall apply *mutatis mutandis*.

E. Suspension, expiry and revocation of the trade license

Art. 24

*Rest*

1) The business license is suspended due to a temporary renunciation of the business activity declared in writing to the Office of National Economy.

2) In the case of safety-related activities, the trade license may be suspended for a maximum of five years.

3) During the suspension of the business license, a domestic address for service shall be designated.

4) The Office of National Economy must be notified in advance of the resumption of commercial activity.

5) The government shall regulate the details of the suspension of the trade license by decree.

Art. 25

*Expiration*

The trade license expires with:

- a) the death of the person entitled to exercise the trade;
- b) the loss of the ability to act;
- c) the waiver declared in writing;
- d) the deletion of the company from the Commercial Register.

Art. 26

*Withdrawal*

The trade license is revoked if:

- a) the requirements for obtaining them are no longer met;
- b) subject to Art. 24, the trade has not been carried on for an uninterrupted period of at least two years;

- c) it was obtained by means of incorrect or misleading information or by concealing material facts;
- d) a repeated risk to the safety and health of the workforce or other persons in connection with the performance of the activity is to be feared;
- e) Fees have not been paid.

#### IV. Pursuit of trade through cross-border provision of services

##### A. Service provision from an EEA member state and Switzerland

###### Art. 27

###### *Principle*

- 1) EEA and Swiss nationals who are legally established in an EEA member state or Switzerland and who are entitled to take up and pursue an activity there in accordance with this Act are permitted to provide temporary and occasional cross-border services in Liechtenstein within the scope of their entitlement.
- 2) The provisions of paragraph 1 shall also apply to:
  - a) legal entities within the meaning of Art. 34 of the EEA Agreement, which are incorporated under the laws of an EEA Member State and have their registered office, central administration or principal place of business in an EEA Member State. If the legal entities have only their registered office in an EEA member state, their activities must have an actual and permanent connection with the economy of an EEA member state;
  - b) legal entities established under Swiss law and having their registered office, head office or principal place of business in Switzerland in accordance with their articles of association; subparagraph (a) sentence 2 shall apply *mutatis mutandis*.
- 3) The temporary and occasional nature of the provision of services is assessed on a case-by-case basis, in particular on the basis of the duration, frequency, regular recurrence and continuity of the service.

###### Art. 28

###### *Reporting obligation*

- 1) Service providers of a qualified trade must notify the Office of National Economy in writing before providing a service in Liechtenstein for the first time.

2) The notification must be renewed once a year if the service provider of a qualified trade intends to provide services in Liechtenstein temporarily or occasionally during the year in question.

#### Art. 29

##### *Documents*

GewG

1) The following documents must be submitted with the notification of the first provision of a service in Liechtenstein:

a) a certificate stating that:

1. the service provider is lawfully pursuing the activity in question in the State of establishment; and

2. the service provider is not prohibited, even temporarily, from performing this activity at the time of submission of the certificate;

b) a proof of citizenship;

c) a proof of professional qualification;

d) if the subject of the service is the business of a private detective or security specialist, proof that the service provider and his employees have no criminal record.

2) If the profession or the training for this profession is not regulated in the country of establishment of the service provider, the service provider must provide a certificate as proof of professional competence stating that he has practiced the profession in question in the country of establishment for at least two years during the previous ten years.

3) If the service provider is a legal entity within the meaning of Art. 27 Para. 2, the evidence pursuant to Para. 1 Letters b to d must be provided for the managing director or the operations manager.

4) The service provider shall immediately notify the Office of National Economy in writing of any material changes from the situation certified in the documents previously submitted, enclosing the documents referred to in paragraph 1.

#### Art. 30

##### *Review*

1) The Office of National Economy may, in the case of occupations affecting public health or safety, determine professional competence prior to the initial provision of the

service to the extent necessary to prevent a serious threat to public health or safety or to the health or safety of the service recipient.

2) The Office of National Economy shall inform the service provider within one month and at the latest before the end of the second month from the date of receipt of the complete documents about its decision not to verify the professional qualification or about the result of the verification.

3) If there is a substantial difference between the professional qualification of the service provider and the training required in Liechtenstein and if public health or safety is endangered as a result, the provisions on compensatory measures under the Act on the Recognition of Professional Qualifications shall apply. In each case, it must be possible to provide the service within the month following the decision taken in accordance with paragraph 2.

4) In the absence of a response from the Office of National Economy within the period set in paras. 2 and 3, the service may be provided.

5) In cases where the professional qualification of the service provider has been verified, the service is provided under the Liechtenstein professional title.

6) The Government shall determine the professions under subsection 1 by ordinance.

#### Art. 31

##### *Rights and obligations of service providers*

When providing services, service providers are subject to the same professional rules as persons admitted to practice the activity in question in Liechtenstein.

#### Art. 32

##### *Use of the professional title*

1) Service providers must provide the service under the professional title of the country of establishment. If there is no professional title in the country of establishment, the service provider must indicate his training certificate.

2) The professional title or proof of training must be in the official language or one of the official languages of the state of establishment.

B. Provision of services from a third country Art. 33



*Principle*

1) Nationals of a third country and legal persons with an establishment in a third country who are entitled to take up and pursue an activity there in accordance with this law may be authorized to provide cross-border services in Liechtenstein on a temporary and occasional basis within the scope of their authorization if:

- a) the foreign authorization is equivalent to the Liechtenstein trade license;
- b) counter right exists; and
- c) a domestic address for service has been designated.

2) The service provider shall assist the Office of National Economy by submitting the information necessary with regard to the requirements of equivalence and the reciprocal right and shall in particular submit the following documents:

a) a certificate stating that:

1. the service provider is lawfully pursuing the activity in question in the State of establishment; and

2. the service provider is not prohibited, even temporarily, from performing this activity at the time of submission of the certificate;

b) a proof of citizenship;

c) for qualified trades, a proof of professional qualification;

d) a proof of the domestic address for service;

e) if the subject of the service is the business of a private detective or security specialist, proof that the service provider and his employees have no criminal record.

3) If the service provider is a legal entity within the meaning of Paragraph 1, the evidence under Paragraph 2(b), (c) and (e) must be provided for the managing director or the operations manager.

4) A permit may also be issued if:

a) the exercise requirements pursuant to Art. 11 Para. 1 Letters a, b, d and f are met; and

b) there are economic interests of the country worthy of consideration.

- 5) If the service provider in the cases under paragraph 4 is a legal entity, the exercise requirements under Art. 11 Para. 1 Letters a, b and d must be proven for the managing director or the operations manager.
- 6) Art. 21 par. 1 and 2 shall apply *mutatis mutandis* to the procedures.
- 7) Any significant changes from the situation certified in the documents submitted so far must be reported in writing to the Office of National Economy without delay, enclosing the documents.
- 8) Provisions of interstate treaties remain reserved.

#### V. Organization and implementation

##### A. General

#### Art. 34

##### *Execution*

Supervision and enforcement of this Act shall be the responsibility of the Office of National Economy.

#### Art. 35

##### *Cooperation of domestic authorities*

- 1) The authorities of the state and the municipalities, the courts, the public prosecutor's office, as well as institutions and corporations under public law shall provide the Office of National Economy with all information and disclose all documents required for the enforcement of this Act.
- 2) The courts and the public prosecutor's office shall immediately notify the Office of National Economy of the initiation and discontinuation of proceedings of a criminal, insolvency or execution nature that are directed against trade licensees, their managing directors or business managers, and shall send it copies of the corresponding decisions without being requested to do so.
- 3) The Financial Market Authority must inform the Office of Economic Affairs without delay of a notification pursuant to Art. 3 para. 3 letters e to g of the Due Diligence Act.
- 4) The Tax Administration shall notify the Office of National Economy annually of those traders for whom the documents submitted show that they have not carried out any business activity in two consecutive tax years. At the request of the Office of National Economy, the tax administration shall also provide information on whether the trader has paid the taxes.

5) In order to perform its duties, the Office of National Economy is entitled to inspect the following registers by means of a retrieval procedure:

- a) the Central Register of Persons; and
- b) the Liechtenstein Business Register.

#### Art. 36

##### *Cooperation with foreign authorities*

1) The Office of National Economy shall submit to a requesting competent authority of an EEA Member State and provided that reciprocity exists

- disclose to Switzerland all information that the latter requires for the performance of its supervisory duties under commercial law, if:

- a) the sovereignty, security, public order or other essential interests of the country are not violated;
- b) the recipients or the persons employed and authorized by the competent foreign authority are subject to official or professional secrecy.

2) The Office of National Economy may request foreign supervisory authorities to disclose any information necessary for the performance of its duties under this Act.

3) Cooperation with authorities from other EEA member states takes place primarily within the framework of the Internal Market Information System (IMI).

#### B. Data protection Art. 37

##### *Processing and disclosure of personal data*

1) The Office of National Economy may process or have processed personal data, including personal data on criminal convictions and criminal offenses, to the extent necessary for the performance of its duties under this Act.

2) The Office of National Economy may disclose data pursuant to paragraph 1:

- a) the authorities of the state and the municipalities, public-law institutions and corporations, the courts and the public prosecutor's office, and the Central Joint Commission, insofar as this is necessary for the performance of their statutory duties;
- b) the contracting parties within the meaning of the Act on the Declaration of General Applicability of Collective Labor Agreements (AVEG), insofar as this is necessary for the fulfillment of their duties under the AVEG;

- c) foreign authorities in accordance with Art. 36;
  - d) information requestor in accordance with Art. 38.
- 3) Disclosure of data is usually in the form of an extract from the trade register.
- C. Trade Register Art. 38

*Leadership*

1) The Office of National Economy maintains an electronic register in which the trade-legal data of the trade licensees, the managing directors and, if applicable, the business managers are entered. This includes in particular:

- a) the personal data or the company name, the registered office and the legal form of the business licensee as well as the personal data of the managing director and the operations manager;
- b) the delivery address;
- c) the trade purpose;
- d) the location of the operating sites;
- e) Commencement, suspension and termination of the trade license;
- f) Administrative measures and administrative criminal sanctions.

2) Cross-border service providers notified in accordance with Art. 28 and authorized in accordance with Arts. 30 and 33 shall also be entered in the Trade Register with the information in accordance with para. 1.

3) Upon payment of the established fees, the Office of National Economy shall, upon request, issue extracts from the register and certify that a certain trade license is not registered. No formal requirements apply to the request for information.

4) The Office of National Economy may make data from the Trade Register publicly available.

5) The Government shall regulate the details of keeping the Trade Register by ordinance, in particular:

- a) the content of the trade register;
- b) the preparation of extracts and certificates from the Trade Register;
- c) the publication of register data.

D. Controls and measures

Art. 39

*Controls and duty to cooperate*

- 1) The Office of National Economy may arrange for or conduct inspections and searches of establishments to verify compliance with the provisions of this Act or the ordinances issued thereunder. The procedure shall be governed by the Act on the General Administration of the Province.
- 2) Trade licensees and their personnel are obliged to provide the Office of National Economy with all information and documents required for proper control.
- 3) If there is reason to believe that an activity subject to this Act is being carried out without a business license, the Office of National Economy may demand information and documents from the persons concerned as if they were subject persons.

## Art. 40

*Measures*

If there are violations of this law or other grievances, the Office of National Economy shall order the measures necessary to establish the lawful state of affairs and to eliminate the grievances. In particular, the Office of Economic Affairs may:

- a) prohibit the exercise of the trade;
- b) suspend or revoke the trade license;
- c) close the operation completely or partially.

## Art. 41

*Blocking of a cross-border service provider*

A person who repeatedly violates the obligations under Articles 28 to 33 may be excluded from providing cross-border services by the Office of National Economy for a maximum period of one year.

## E. Fees

## Art. 42

*Fees*

- 1) Fees are charged for official acts of the Office of National Economy, in particular in connection with the registration and approval of commercial activities and the revocation of trade licenses.
- 2) The fees for official acts in connection with the application and

Permits for commercial activities as well as for other procedures initiated upon request shall be paid in advance.

3) Cancellations and suspensions of business licenses as well as the resumption of business activities pursuant to Art. 24 Para. 4 shall be free of charge.

4) The Government shall regulate the details of the levying of fees by ordinance.

F. Opening hours of establishments Art. 43

*Opening hours*

1) The Government shall determine by ordinance the opening hours on working days for the establishments subject to this Act, in particular stores and service stations. In doing so, it shall take particular account of the needs of traders and customers as well as the public's need for peace and quiet.

2) On Sundays and public holidays, businesses shall be kept closed as a matter of principle. The government shall regulate exceptions by ordinance, taking into account the principles set forth in subsection 1; it may make the keeping open of establishments subject to a permit.

3) When determining the opening hours for catering establishments, the government shall take into account the guarantee of a reasonable night's rest.

4) The provisions of labor law remain reserved.

VI. Penal provisions

Art. 44

*Transgressions*

1) The Office of Economic Affairs shall impose a fine of up to 20,000 francs on anyone who intentionally:

a) carries out a commercial activity without a business license;

b) makes incorrect or misleading statements to the Office of National Economy or conceals material facts;

c) provides a cross-border service without meeting the requirements of Articles 27, 28(1), 30 and 33;

d) fails to comply with the duty to cooperate pursuant to Art. 39 par. 2 or 3.

2) The Office of Economic Affairs shall impose a fine of up to 5,000 francs on anyone who intentionally:

- a) is not actually and managerially active in the company as a managing director pursuant to Art. 17 Para. 2 Letter b or as an operations manager pursuant to Art. 18 Para. 2 Letter b;
  - b) violates the notification obligation under Art. 23;
  - c) violates the reporting obligation under Art. 28 par. 2, Art. 29 par. 4 or Art. 33 par. 7
  - d) fails to comply, fails to comply in full or fails to comply in good time with a request to restore the lawful condition or with an order to that effect issued by the Office of Economic Affairs;
  - e) violates the regulations on opening hours according to Art. 43;
  - f) violates provisions of ordinances, the violation of which is declared punishable by law.
- 3) If a criminal act under paras. 1 and 2 is committed negligently, the upper limit of the penalty shall be reduced to half.
  - 4) This is without prejudice to criminal liability under other provisions of criminal law.

#### Art. 45

##### *Responsibility*

If violations are committed in the business operations of a legal entity, a general or limited partnership, or a sole proprietorship

If the offence is committed on behalf of a legal entity, the criminal provisions shall apply to the persons who acted or should have acted on its behalf, but with joint and several liability of the legal entity, the general and limited partnership or the sole proprietorship.

#### VII. Legal

##### remedies

#### Art. 46

##### *Complaint*

- 1) Appeals against decisions and rulings of the Office of National Economy may be lodged with the Appeals Commission for Administrative Matters within 14 days of notification.
- 2) Appeals against decisions of the Appeals Commission for Administrative Matters may be lodged with the Administrative Court within 14 days of notification.
- 3) The provisions of the Act on the General Administration of the State shall apply to the procedure.

VIII. Transitional and final provisions Art. 47

*Executive Orders*

The Government shall issue the regulations necessary for the implementation of this Act.

Art. 48

*Pending proceedings*

- 1) The new law shall apply to applications pending at the time of the entry into force of this Act.
- 2) Criminal proceedings pending at the time of the entry into force of this Act shall be governed by the previous law.

Art. 49

*Existing business licenses*

- 1) Business licenses lawfully issued before the entry into force of this Act shall remain valid subject to paragraph 2.
- 2) Commercial activities of natural persons and legal entities as well as general and limited partnerships licensed under the previous law, whose activities no longer fall within the scope of this Act pursuant to Art. 3, may continue their activities until 31 December 2025 at the latest.

Art. 50

*Obligations of certain persons authorized to carry out a trade to provide evidence*

Persons authorized to engage in business who are subject to due diligence at the time of the entry into force of this Act shall prove the reliability of the qualified beneficial owners within one year of the entry into force of this Act.

Art. 51

*Repeal of previous law*

The Trade Act (GewG) of 22 June 2006, LGBl. 2006 No. 184, as amended, is repealed.

Art. 52

*Entry into force*

This Act shall enter into force subject to the unused expiry of the referendum period.



shall enter into force on January 1, 2021, otherwise on the day after the announcement.

## **VI. Trade Regulation**

from 15 December 2020

Based on Art. 5 par. 2, Art. 6 par. 3, Art. 10 par. 3, Art. 15 par. 2, Art. 16 Para. 4, Art. 24 Para. 5, Art. 30 Para. 6, Art. 38 Para. 5, Art. 42 Para. 4, Art. 43 Para. 1 and 2 and Art. 47 of the Trade Act (GewG) of September 30, 2020, LGBl. 2020 No. 415, enacts Gov:

### **I. General provisions Art. 1**

#### *Subject*

This Regulation regulates in particular:

- a) Qualified trades, associated trades, trades requiring a permit and safety-related trades;
- b) the requirements and procedures for obtaining a trade license;
- c) the keeping of the trade register;
- d) the collection of fees.

### **Art. 2**

#### *Implementation of EEA legislation*

- 1) This Regulation implements the following EEA legislation:
  - a) Directive 2005/36/EC on the recognition of professional qualifications;
  - b) Directive 2006/123/EC on services in the internal market;
  - c) Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
- 2) The valid version of the EEA legal provisions mentioned in para. 1 results from the promulgation of the decisions of the EEA Joint Committee in the Liechtenstein Law Gazette in accordance with Art. 3 let. k of the Promulgation Act.

### **Art. 3**

#### *Classification of trades*

The trades are classified as follows:

- a) qualified trades (and their scope of activity) according to Annex 1;

- b) associated trades according to Annex 2;
- c) trades requiring a permit according to Annex 3;
- d) safety-related trades according to Annex 4.

II. Professional  
suitability

A. General

GewV

Art. 4

*Principle*

1) The professional qualification within the meaning of Article 15 of the Act is possessed by a person who meets one of the following requirements:

- a) Successful completion of higher professional training closely related to the trade. Higher professional education is defined as studies and courses at universities or colleges of higher education;
- b) successful completion of two to four years of basic vocational training in the relevant trade followed by two years of practical work in the relevant trade;
- c) three years of practical work in the relevant trade followed by successful completion of two to four years of basic vocational training in the relevant trade;
- d) successful completion of the Matura examination and subsequent five years of practical work in the relevant trade; or
- e) At least eight years of practical work in the trade in question.

2) Art. 6 to 21 remain reserved.

Art. 5

*Practical activity*

- 1) The practical activity must be suitable to provide the knowledge necessary for the practice of the trade.
- 2) The specified duration of the practical activity applies to an employment level of at least 60% and is extended accordingly for a lower employment level.
- 3) In the case of safety-related trades in accordance with Annex 4, the practical activity must have been completed during the last five years prior to submission of the application for a trade permit.

B. Special provisions for individual trades Art. 6

*Master builder and master woodworker*

Anyone wishing to practice the trade of master builder or master woodworker must prove:

- a) successful completion of a recognized higher technical examination or construction management examination in the relevant trade;
- b) the successful completion of a university degree (specialization in construction); or
- c) training equivalent to points (a) or (b), consisting in particular of successful completion of a higher technical college and one year's practical experience in the construction industry.

Art. 7

*Mountain guide*

Anyone wishing to practice the trade of mountain guide must provide proof:

- a) successful completion of a recognized professional examination; or
- b) the successful completion of training equivalent to that described in subparagraph (a).

Art. 8

*Vocational, academic and career counselor*

Anyone wishing to practice the profession of vocational, study and career counselor must provide proof of successful completion of a recognized university education.

Art. 9

*Electrical installer, electrical installation and safety expert and installation electrician*

Anyone wishing to practice the trade of electrician, electrical installation and safety expert or installation electrician must provide proof:

- a) the successful completion of a recognized higher technical examination;
- b) the successful completion of a university degree (specialization in electrical engineering); or

c) training equivalent to points (a) or (b), consisting in particular of successful completion of a higher technical college and one year's practical work in the field of electrical engineering.

Art. 10

*Electrical project manager installation and safety*

Anyone wishing to practice the trade of electrical project manager installation and safety must provide proof:

- a) successful completion of a recognized professional examination; or
- b) the successful completion of training equivalent to that described in subparagraph (a).

Art. 11

*Hospitality, catering and party service*

Anyone wishing to work in the hospitality industry or run a catering or party service business must prove that they have successfully passed the examination in accordance with the Ordinance on Professional Qualification in the Hospitality Industry.

Art. 12

*Hearing aid acoustician*

Anyone wishing to practice the trade of hearing aid acoustician must provide proof:

- a) the successful completion of a recognized professional examination;
- b) successful completion of two levels of training according to the European Academy of Hearing, Audio Communication and Auditory Informatics (AHAKI);  
or
- c) the successful completion of training equivalent to that specified in

subparagraphs a or b above. Art. 13

*Collection expert*

Anyone who wants to practice the trade of debt collection expert must prove:

- a) successful completion of commercial training and at least two years of practical experience in the field of debt collection;
- b) successful completion of a commercial apprenticeship with integrated or separate additional training to become a clerk

Debt collection and at least one year of practical experience in the field of debt collection; or

c) successful completion of higher professional education at a university closely related to debt collection.

Art. 14

*Design engineer and metal construction designer.*

*Metal construction designer*

Anyone wishing to practice the trade of design engineer or metal construction design engineer must prove:

a) successful completion of a recognized higher technical examination in the relevant trade;

b) the successful completion of a university degree (majoring in mechanical engineering); or

c) training equivalent to points (a) or (b), consisting in particular of successful completion of a higher technical college and one year's practical work in the field of mechanical engineering.

Art. 15

*Beautician or cosmetician*

Anyone wishing to practice the trade of cosmetician must provide proof:

a) successful completion of three years of basic vocational training.  
ding; or

b) the successful completion of training equivalent to that described in subparagraph (a).

Art. 16

*Food production and processing*

Anyone wishing to engage in the business of food manufacturing or processing must demonstrate:

a) Knowledge of food hygiene to the extent of professional competence as defined in Art. 11; or

b) A professional certificate in a food occupation.

Art. 17

*Network electrician*

Anyone who wants to practice the trade of network electrician must prove:

- a) the successful completion of a recognized higher technical examination;
- b) the successful completion of a university degree (specialization in electrical engineering); or
- c) training equivalent to points (a) or (b), consisting in particular of successful completion of a higher technical college and one year's practical work in the field of electrical engineering.

GewV

Art. 18

*Private detective and security specialist.*

*Safety specialist*

Anyone wishing to practice the trade of private investigator or security specialist must provide proof:

- a) A minimum of two years of service as a police officer with the state police or other security agency with appropriate training;
- b) successful completion of basic vocational training and at least five years of practical experience in the relevant trade; or
- c) successful completion of the Matura examination and subsequent five years of practical work in the relevant trade.

Art. 19

*Pyrotechnician*

Anyone wishing to practice the trade of pyrotechnician must prove:

- a) successful completion of a recognized professional examination and work on at least ten large fireworks displays at a recognized pyrotechnics company; or
- b) the successful completion of a university (specialization in physics/chemistry) and a pyrotechnical training course as well as the participation in at least ten large fireworks displays at a recognized pyrotechnical company.

Art. 20

*Blasting specialist*

Anyone who wishes to practice the trade of blasting specialist,

must prove:

- a) possession of a blasting license or successful completion of blasting training and, in both cases, at least three years of practical experience in the field of blasting;
- b) successful completion of a university degree (specializing in civil engineering/geology) and blasting training, as well as at least one year of practical experience in the field of blasting; or
- c) successful completion of a recognized professional examination, which requires at least two years of practical work in the field of blasting.

Art. 21

*Tattoo artist and piercer*

Anyone wishing to practice the tattooing or piercing trade must hold a recognized certificate of competence and provide evidence of two years of practical experience in the trade.

C. Recognition of foreign professional qualifications Art. 22

*Recognition of foreign training certificates*

- 1) Evidence of formal qualifications issued or recognized by other EEA Member States shall be recognized in accordance with Articles 10 to 15 of Directive 2005/36/EC.
- 2) The recognition of training certificates issued or recognized by Switzerland is carried out in accordance with the Convention establishing the European Free Trade Association (Vaduz Convention).
- 3) Moreover, the provisions of the Act on the Recognition of Professional Qualifications shall apply to the recognition of foreign training certificates pursuant to subsections 1 and 2.
- 4) Education certificates from third countries can be recognized by the Office of National Economy if they are equivalent to a recognized Liechtenstein education certificate and there is a counter right.

Art. 23

*Recognition of professional experience*

In the case of nationals of an EEA member state or Switzerland, the previous actual exercise of the relevant activity in another EEA member state or Switzerland shall be taken into account in accordance with Articles 16 to 19 of the Directive.



2005/36/EC or the Vaduz Convention are recognized.

Art. 24

*Verification of professional competence in the case of cross-border provision of services*

The Office of National Economy may, in particular in the case of trades referred to in carry out an inspection within the meaning of Art. 30 of the Act.

GewV

III. Procedure

Art. 25

*Registration and application*

1) The form provided by the Office of Economic Affairs must be used to register a trade or apply for a permit; the form must be signed by the person registering or applying.

2) The form referred to in paragraph 1 shall contain in particular:

- a) Surname, first name, residential address and nationality and, if applicable, company name of the registering or applying natural person;
- b) if applicable, the surname, first name, home address and nationality of the plant manager;
- c) a precise description of the purpose of the trade;
- d) if applicable, information on the workload of the plant manager and the proportion of this to be spent at the plant;
- e) the location of the establishment or establishments;
- f) the delivery address;
- g) information on any grounds for exclusion under Article 12 of the Act; and
- h) Information about the capacity to act.

3) In the case of legal entities and general and limited partnerships, the form under paragraph 1 must contain the following information in addition to the information under paragraph 2 letters b to g:

- a) Company and legal form;
- b) Surname, first name, residential address and nationality of the managing director;
- c) the workload of the managing director and of the

portion thereof to be spent at the permanent establishment.

Art. 26

*Proof of the exercise requirements*

- 1) The form pursuant to Art. 25 Para. 1 must be accompanied by evidence of the exercise requirements:
  - a) in relation to the notifying or applying natural person:
    1. a copy of the identity card or passport and, in the case of third-country nationals, additionally a copy of the Liechtenstein residence permit;
    2. an original extract from the criminal record;
    3. an original garnishment register extract; and
    4. a proof of professional qualification according to Art. 27 for qualified trades;
  - b) with regard to the managing director and the operations manager:
    1. the evidence referred to in subparagraph (a); and
    2. a copy of the employment contract, if applicable;
  - c) with respect to the beneficial owner pursuant to Art. 19 of the Act, the evidence pursuant to subparagraphs (a)(1) to (3);
  - d) in relation to the legal entity, general or limited partnership:
    1. a copy of the extract from the commercial register; and
    2. an original extract from the garnishment register;
  - e) in relation to the permanent establishment:
    1. A plan showing the location and required premises of the establishment and the various parts thereof; and
    2. an extract from the land register or a written lease agreement or other equivalent document proving the rights of use;
  - f) with respect to the tour operator or the intermediary of linked travel services under the Package Travel Act, proof of coverage under Article 14 of the Act; and
  - g) proof of payment of the application or permit fees.
- 2) The extracts from the criminal and garnishment registers or foreign documents equivalent to them must not be older than three months at the time of their presentation.

must be submitted. Evidence of unsuccessful garnishments or insolvency proceedings must also be provided for the past three years.

3) The Office of National Economy may reject documents for lack of credibility and require them in individual cases:

- a) other documents proving the conditions of exercise;
- b) Original documents; and
- c) certified translations for foreign language documents.

4) The documents referred to in Annex VII to Directive 2005/36/EC shall be accepted as equivalent evidence.

Art. 27

*Professional suitability*

As proof of professional qualification, the Office of Economic Affairs must be provided with certificates in accordance with Articles 4 to 21 concerning:

- a) the successful completion of specific training, such as diplomas or examination certificates; and
- b) the type and duration of practical work, such as work certificates or work references.

Art. 28

*Indulgence*

- 1) Any person who wishes to exercise a trade despite the existence of a ground for exclusion within the meaning of Article 12 of the Act must submit a reasoned application for leniency to the Office of National Economy.
- 2) In the case of trades subject to registration, the request for leniency must be made prior to the registration of the trade and must have been legally decided.
- 3) In the case of trades requiring a permit, the application for leniency may be submitted as part of the application for a permit.

Art. 29

*Change in exercise requirements*

- 1) The Office of Economic Affairs shall be notified in writing without delay of any changes in the conditions for exercising the right; the notification shall contain the necessary information and evidence in accordance with Articles 25 and 26.
- 2) In the case of trades requiring a permit, the making of the change requires a

Exercise subject to the prior approval of the Office of Economic Affairs.

3) Changes within the meaning of paras. 1 and 2 shall be deemed to include in particular:

- a) Change of the trade purpose;
- b) Change in management or operational management;
- c) Change of permanent establishment;
- d) Change of delivery address.

Art. 30

*Rest*

1) The declaration of temporary renunciation of the exercise of commercial activity shall be made using the form provided by the Office of National Economy. The following information must be provided:

- a) The beginning and expected end of the period of inactivity; and
- b) the relevant domestic address for service for the duration of the suspension.

2) The resumption of professional activity must be notified to the Office of National Economy using the official form. Changes in the conditions for exercising the activity are governed by Art. 29.

IV. Special provisions for the hospitality and security industry

A. Hospitality Art. 31

*Administration of certain dishes*

Certain meals within the meaning of Article 3(4)(a) of the Act are:

- a) Dishes that can be prepared and cooked with little effort, esp:
  - 1. Sausages, hamburgers, fries and the like;
  - 2. Pizza and pasta;
  - 3. sandwiches and sandwiches;
  - 4. Salads;
- b) prepackaged food; and
- c) seasonal own products.

B. Private Detective and Security Specialist  
professional

Art. 32

*Principle*

- 1) The activities of the private investigator or the security specialist may only be carried out to the extent that they do not interfere with official investigative activities. The relevant orders of the investigative bodies must be complied with immediately.
- 2) The employees employed by the trade licensees pursuant to subsection 1 shall have the reliability and suitability required for their employment.
- 3) The use of a uniform requires the approval of the Office of National Economy. Permission is granted if there is no danger of confusion with the uniforms of the public security service, in particular the national and municipal police, the customs and border guards and the postal service.

Art. 33

*Consultation of the state police*

Before issuing a permit under Article 21 of the Act, the Office of National Economy shall obtain an opinion from the National Police.

Art. 34

*Legitimation obligation*

- 1) Persons authorized to carry on a business and their employees must carry an identification card with a photograph when carrying out their activities outside the business premises and present it to the police on request.
- 2) Business licensees must ensure that their employees carry an identification card with a photograph when carrying out their activities outside the business premises and present it to the police upon request.
- 3) The legitimation card is issued upon application by the Office of National Economy for a limited period of no more than three years from the date of issue. Before issuing the legitimation card, the Office of Economic Affairs must check the applicant's reliability and suitability within the meaning of Art. 32 Para. 2 and, to this end, request information from the national police as to whether the police information systems contain any information that might militate against the issuance of the legitimation card.
- 4) The application must be submitted by the trade licensees no later than two weeks before the

first planned deployment must be submitted to the Office of National Economy and must include:

- a) the proofs according to Art. 26 par. 1 let. a fig. 1 to 3; and
  - b) the consent of the employee that the result of the inspection by the National Police will be communicated to the Office of National Economy and the person authorized to carry out the trade.
- 5) The business licensees are obliged to return the legitimization card to the Office of National Economy if:
- a) the requirements for issuance are no longer met;
  - b) the employment relationship with the employee has ended;
  - c) the period of validity of the legitimization card has expired; or
  - d) the trade license ends.

#### V. Trade Register

##### Art. 35

###### *Contents of the trade register*

- 1) The following data are recorded in the Trade Register about persons authorized to carry out a trade:
- a) for natural persons:
    - 1. Name, first name and date of birth;
    - 2. company, if necessary;
    - 3. domestic delivery address;
    - 4. Location of the operating site or sites;
    - 5. Commercial purpose;
    - 6. if applicable, the surname, first name and date of birth of the plant manager;
    - 7. Date of the beginning and end of the trade license;
    - 8. if applicable, the date of the beginning and end of the suspension of the trade license; and
    - 9. Administrative measures and administrative criminal sanctions;
  - b) for legal entities and general and limited partnerships:
    - 1. Company and legal form;

2. domestic delivery address;
  3. Location of the operating site or sites;
  4. Commercial purpose;
  5. Date of the beginning and end of the trade license;
  6. if applicable, the date of the beginning and end of the suspension of the trade license;
  7. Surname, first name and date of birth of the managing director and, if applicable, of the operations manager;
  8. the beginning and end of the function of the managing director and, if applicable, of the operations manager; and
  9. Administrative measures and administrative criminal sanctions.
- 2) The following data are recorded in the Trade Register on registered and authorized cross-border service providers:
- a) for natural persons:
    1. Name, first name and date of birth;
    2. company, if necessary;
    3. Delivery address;
    4. Location of the branch;
    5. Commercial purpose;
    6. Date of the beginning and end of the provision of services in Liechtenstein; and
    7. Administrative measures and administrative criminal sanctions;
  - b) for legal entities and general and limited partnerships:
    1. Company and legal form;
    2. Delivery address;
    3. Location of the branch;
    4. Commercial purpose;
    5. Date of the beginning and end of the provision of services in Liechtenstein;
    6. the surname, first name and date of birth of the managing director and, if applicable, of the operations manager; and
    7. Administrative measures and administrative criminal sanctions.

Art. 36

*Register excerpt and certificate*

- 1) The Office of National Economy issues upon informal request:
  - a) an extract from the trade register, if:
    1. a trade license exists, is suspended or existed previously;
    2. a notification or authorization of a cross-border provision of services exists or has existed in the past;
  - b) a certificate stating that at no time has a business license existed or that a cross-border provision of services has been notified or approved.
- 2) The extract from the register does not contain information on administrative measures and administrative criminal sanctions.

Art. 37

*Publicly accessible information platform*

- 1) If the Office of National Economy provides data from the Trade Register via a publicly accessible information platform, access is free of charge.
- 2) Via the information platform according to para. 1 are made accessible:
  - a) with respect to existing business licenses:
    1. Surname and first name or company name and legal form of the business licensee(s);
    2. Delivery address; and
    3. Location of the operating site or sites;
  - b) in relation to reported and authorized cross-border service providers:
    1. Name and first name or company and legal form;
    2. Delivery address; and
    3. Location of the branch.

VI. Fees Art.

38

*Fee amount*



1) The Office of National Economy charges the following flat fees for the following official acts:

a) for the processing of an application under Article 20 of the Act:

1. for natural persons: 250 francs;
2. for legal entities or general or limited partnerships: 500 francs;

b) for processing an application for a permit under Article 21 of the Act:

1. for natural persons: 500 francs;
2. for legal entities or general or limited partnerships: 1,000 francs;

c) for processing a notification of change in exercise prerequisites:

1. Change of trade purpose: 200 francs;
2. Change in the management or management of the company: 200 francs;
3. Change of permanent establishment: 100 francs;
4. Change of delivery address: 30 francs;

d) for the issuance of an extract or certificate from the Trade Register, per person authorized to trade or provide services: CHF 30;

e) for the issuance of a legitimization card according to Art. 34: 100 francs.

2) For further official acts, the Office of Economic Affairs may charge fees based on the time and costs involved. The hourly rate is 100 to 300 francs, depending on the function level of the person carrying out the work.

3) In the event of a negative decision or withdrawal of an application or request, the fee under paragraph 1 may be reduced.

#### Art. 39

##### *Fee payment and refund*

1) The fees of the Office of National Economy are payable to the National Treasury as follows:

a) in advance in the case of official acts under Art. 38 par. 1 and other proceedings initiated upon request;

b) within 30 days after invoicing for official acts pursuant to Art. 38 par. 2.

2) In the cases referred to in Art. 38 par. 3, the overpaid amount of fees shall be refunded.

VII. Penal provisions

Art. 40

*Transgressions*

Pursuant to Art. 44, para. 2, subpara. f of the Act, a person shall be punished who:

- a) violates the obligations under Art. 32 par. 1 or Art. 34 par. 1, 2 and 5;
- b) uses a uniform without permission in accordance with Article 32, paragraph 3.

VIII. Transitional and final provisions Art. 41

*Return of business licenses issued under the previous law*

Originals of business licenses issued under previous law shall be returned to the Office of National Economy if:

- a) an amendment or supplement to the business license is made;
- b) the business license is suspended;
- c) the licensee waives, in whole or in part, the exercise of the licensed activity; or
- d) the authorization is withdrawn or expires.

Art. 42

*Repeal of previous law*

It is repealed as amended from time to time:

- a) Trade Regulation Ordinance (GewV) of 7 June 2011, LGBl. 2011 No. 226;
- b) Ordinance of July 9, 1901, concerning the introduction of a mountain guide regulation for the Principality of Liechtenstein, LGBl. 1901 No. 2;
- c) Article 10(a) of the Ordinance of September 12, 1995, on the Collection of Administrative Costs and Fees by the Government and Official Offices, LGBl. 1995 No. 198.

Art. 43

*Change of designations*

1) In the following provisions, the term "trade permit" or "permit under the provisions of the Trade Act" shall be replaced by the term "trade license":

a) Art. 1 para. 3 of the Ordinance of 30 December 1970 concerning the exploitation of rock materials in the Rhine, LGBl. 1971 No. 5;

b) Art. 3 par. 1 and 2 and Art. 11 par. 2 of the Ordinance of 23 November 2004 on the Construction Work Coordination Act (Construction Work Coordination Ordinance, BauKV), LGBl. 2004 No. 247;

c) Art. 37b para. 5 of the Ordinance of 17 February 2009 on Professional Due Diligence Obligations to Combat Money Laundering, Organized Crime and Terrorist Financing (Due Diligence Ordinance; DDO), LGBl. 2009 No. 98;

d) Art. 8(3) and Art. 13(2)(a) of the Ordinance of 17 December 2019 on Package Travel and Related Travel Services (Package Travel Ordinance; PRV), LGBl. 2020 No. 23.

2) In the following provisions, the term "business and health permits and similar permits" shall be replaced by the term "business licenses, health permits and similar permits":

a) Article 18 of the Ordinance of 16 December 2008 on the Admission and Residence of Foreigners (ZAV), LGBl. 2008 No. 350;

b) Art. 20 para. 1 of the Ordinance of 15 December 2009 on the Free Movement of Persons for EEA and Swiss Nationals (Ordinance on the Free Movement of Persons; PFZV), LGBl. 2009 No. 350.

3) In Annex 5 item 1 c) of the Ordinance of 6 August 1996 on Accreditation and Notification, LGBl. 1996 No. 135, the term "trade license" shall be replaced by the term "trade register extract".

4) In the Ordinance of December 11, 2001 on the opening hours of catering establishments and the duration of events to preserve nighttime peace, LGBl. 2002 No. 3, the ingress now reads as follows: "Based on Art. 43 of the Trade Act (GewG) of 30 September 2020, LGBl. 2020 No. 415, and Art. 52 of the Municipal Act (GemG) of

March 20, 1996, LGBl. 1996 No. 76, the Government decrees:".

5) In the Gaming Ordinance (SPBV) of 21 December 2010, LGBl. 2010 No. 439, the ingress now reads as follows: "Based on Art. 6, Art. 10 para. 2, Art. 11 para. 2, Art. 12 para. 2, Art. 13 para. 6, Art. 16a para. 2, Art. 17 para. 6, Art. 18 para. 2. and 3, Art. 19 paras. 2 and 3, Art. 20 par. 2, Art. 22 par. 3, Art. 26 par. 4, Art. 27 par. 5, Art. 28 par. 3, Art. 30 par. 4 and 5, Art. 31 par. 2, Art. 34 par. 2, Art. 36 par. 5,

Art. 38 par. 3, Art. 73 par. 4, Art. 74 par. 5, Art. 82 par. 4, Art. 82a par. 3, Art. 82b par. 4, Art. 83 par. 4, Art. 83a par. 4 and Art. 98 of the Money Gaming Act (GSG) of June 30, 2010, LGBl. 2010 No. 235, as amended, and Art. 43 of the Gewerbegesetz (GewG) of September 30, 2020, LGBl. 2020 No. 415, the Re- government decrees:".

6) In the Ordinance of December 17, 2019 on Package Travel and Related Travel Services (Package Travel Ordinance; PRV), LGBl. 2020 No. 23, the in gress now reads as follows: "Based on Article 20 (4) of the Act of December 4, 2019 on Package Travel and Related Travel Services (Package Travel Act; PRG), LGBl. 2020 No. 18, the Government decrees:".

#### Art. 44

##### *Entry into force*

This Regulation shall enter into force on 1 January 2021.

#### Appendix 1

(Art. 3 let. a)

##### Qualified trades and their scope of activity

###### 1. Caulker

The scope of activities of the waterproofing specialist includes in particular:

- a) Protection of flat roofs from the effects of weather;
- b) Waterproofing and insulation of roof structures;
- c) Sealing of tunnels;
- d) Construction of decking;
- e) Green roofs;
- f) Sealing of joints and transitions.

###### 2. Automotive specialist

The field of activity of the automotive specialist includes in particular:

- a) Maintenance, inspection and evaluation of passenger cars and commercial vehicles and preparation for official inspections;
- b) Repair work on the engine, drive and chassis;

- c) Adjustment of vehicle components and replacement of defective parts;
- d) Installation of additional equipment and accessories;
- e) Assessing a test drive and performing simple roadside assistance;
- f) Trade in passenger cars and commercial vehicles, spare parts and accessories.

### 3. Automotive mechatronics technician

The field of activity of the automotive mechatronics technician includes in particular:

- a) Measurement, diagnosis, testing and maintenance work on passenger cars, commercial vehicles and motorcycles;
- b) demanding repair work on the engine, drivetrain, chassis and electrics;
- c) Testing and inspection of passenger cars, commercial vehicles and motorcycles according to official specifications;
- d) Adjustment of vehicle components and replacement of defective parts;
- e) Attachment, installation and commissioning of additional electrical and electronic equipment and accessories;
- f) Trade in passenger cars, commercial vehicles and motorcycles as well as electronic components and accessories.

### 4. Construction machinery mechanic

The field of activity of the construction machinery mechanic includes in particular:

- a) Maintenance and repair of machinery, vehicles and construction equipment;
- b) Manufacturing of spare parts;
- c) Conversions to machines as well as customer-specific adaptations;
- d) Measurement, diagnosis, testing and maintenance work as well as commissioning;
- e) Trade in construction machinery, spare parts and accessories.

### 5. Master builder

The scope of activities of the master builder includes in particular:

- a) Construction and renovation of constructive structures in building construction, civil engineering and traffic route construction;

- b) Planning, organization and calculation of construction work in technical, commercial and personnel terms;
- c) Management of a construction company;
- d) Construction of falsework, working falsework, protective falsework and formwork;
- e) Insulation works for sound, temperature or moisture protection of buildings.

### 6. Baker-Confectioner

The scope of activities of the baker-confectioner includes in particular:

- a) Production and sale of pastries, cakes, wähen and traiteur articles;
- b) Production and sale of small appetizers or snacks such as salads, cereals and sandwiches;
- c) Running a sales outlet.

### 7. Mountain guide

The scope of activities of the mountain guide includes in particular:

- a) Planning, organizing and accompanying mountain, skiing, climbing and hiking tours and expeditions;
- b) Recognizing and assessing hazards and rendering first aid;
- c) Assessing the performance of customers;
- d) Imparting knowledge about weather, rocks and glaciers as well as flora and fauna;
- e) Lead outdoor and adventure activities;
- f) Participate in operations at high altitude construction sites.

### 8. Vocational, academic and career counselor

The scope of activities of the vocational, academic and career counselor includes in particular:

- a) Counseling and support for young people and adults in career and study choices and career questions;
- b) Discussions and analysis of career interests, performance potential, and personality;
- c) Providing information and conducting professional information events;

d) Maintaining cooperation with all institutions dealing with occupational, academic and career issues.

#### 9. Concrete worker

The concrete worker's field of activity includes in particular:

- a) Recipe and processing of concrete mass;
- b) Production of precast concrete elements and other concrete products;
- c) Production of formwork and molds for concrete structures;
- d) Installation of reinforcement and anchors according to plan;
- e) Refinement of the concrete surface by grinding, polishing, fine washing, sand-blasting, etc.;
- f) Transport, assembly and laying of precast concrete elements;
- g) Trade in concrete and accessories.

#### 10. Boat builder

The scope of activities of the boat builder includes in particular:

- a) Manufacture of motor, sail, rowing and other boats made of plastic, metal or wood;
- b) Installation of engines, interiors and accessories;
- c) Installation of electrical equipment, radio equipment, navigation equipment and other ship accessories;
- d) Maintenance and repair work;
- e) Testing and examination of boats according to official specifications;
- f) Adjustment of components and replacement of defective parts;
- g) Trade in boats and accessories.

#### 11. Car body repairer

The field of activity of the car body painter includes in particular:

- a) Execution of sheet metal work on vehicles;
- b) Manufacture and adaptation of spare parts;
- c) Alignment of car bodies;
- d) Disassembly and assembly of mechanical and electrical parts of vehicles;

e) Trade in vehicles, spare parts and accessories.

#### 12. Coiffeuse or hairdresser

The scope of activities of the hairdresser includes in particular:

- a) Design and shaping hairstyles;
- b) Care of the scalp and hair;
- c) Hair wash and color changes of hair;
- d) Advise clients on haircuts, hair and scalp care, and hair replacements and additions;
- e) Trade in products for hair and scalp care;
- f) Running a hairdressing salon.

#### 13. Roofer

The field of activity of the roofer includes in particular:

- a) Insulation and covering of pitched roofs with clay tiles, fiber cement, metal or natural slate;
- b) Creating underroofs and thermal coverings;
- c) Installation of skylights;
- d) Installation of solar systems.

#### 14. Electrical installer, electrical installation and safety expert and installation electrician

The field of activity of the electrician, the electrical installation and safety expert and the installation electrician includes in particular:

- a) Design, construction, maintenance and repair of electrical installations in buildings;
- b) Installation of fuse and switch boxes, as well as sockets and switches;
- c) Connection and commissioning of electrical equipment and installations;
- d) Maintenance and repair work and troubleshooting;
- e) Construction, operation and maintenance of facilities for the production, transport and storage of electrical energy;



f) Trade with electrical devices and equipment as well as spare parts and accessories.

#### 15. Electronics technician

The field of activity of the electronics technician includes in particular:

- a) Development and production of electronic hardware and software;
- b) Planning and supervision of the production of electronic products;
- c) Programming of controls;
- d) Conception of solutions in the areas of computer technology as well as testing, measuring and inspection technology;
- e) Measurement, testing and maintenance work as well as commissioning;
- f) Trade in computers, other electronic equipment, spare parts and accessories.

#### 16. Electrical project manager installation and safety

The scope of activities of the Electrical Project Manager Installation and Safety includes in particular:

- a) comprehensive safety-related consultations;
- b) Control of operational safety and efficiency of installations;
- c) Measurements and analysis of circuits, networks and circuits;
- d) Inspection and control of electrical installations;
- e) Advise customers on improvement options and alternatives to existing installations;
- f) Design and supervision of electrical installation projects;
- g) Preparation of installation and safety concepts of electrical systems.

#### 17. Vehicle mechanic

The field of activity of the vehicle fitter includes in particular:

- a) Production of special constructions and superstructures for commercial and special vehicles;
- b) Equipment of commercial vehicles with devices such as cranes, tipping and lifting devices;
- c) Composition of hydraulic systems;

- d) Maintenance and repair work;
- e) Trade in vehicles, components, spare parts and accessories.

#### 18. Facade builder

The field of activity of the facade builder includes in particular:

- a) Protection of buildings from moisture, heat and cold;
- b) Work with various materials such as fiber cement, wood, ceramics, metal, natural stone and glass;
- c) Creating substructures;
- d) Renovations of old buildings;
- e) Installing thermal insulation.

#### 19. Meat specialist

The field of activity of the meat specialist includes in particular:

- a) Cutting, processing and portioning of carcasses;
- b) Production of sausages and canned meat;
- c) Preservation of meat products;
- d) Preparation of dishes, salads and cold plates;
- e) Running a sales outlet.

#### 20. Forest warden

The scope of activities of the forest warden includes in particular:

- a) Maintenance of forests, hedges, biotopes and nature reserves;
- b) Timber harvest;
- c) Creation of plantings;
- d) Construction and maintenance of trails and slope, stream and avalanche protection;
- e) Prevention of damage caused by plants, animals, fungi and humans;
- f) Trade in wood and wood preservation products.

#### 21. Gardener

The scope of activities of the gardener includes in particular:

- a) Cultivation and cultivation of plants (vegetables, flowers, perennials, shrubs and

Trees) in the open or in greenhouses;

- b) Creation of site-appropriate plantings;
- c) Propagation and grafting of ornamental and useful shrubs;
- d) Production of floral arrangements and wreaths;
- e) Construction and maintenance of garden, play and sports facilities;
- f) Construction of paths, walls, stairs and irrigation systems;
- g) Maintenance and repair work;
- h) Trade in plants, flowers and accessories.

#### 22. Hospitality, catering and party service

The scope of activities of the hospitality, catering and party service includes in particular:

- a) Serving food and beverages, especially in restaurants, dancings, cafés, ice cream parlors, staff restaurants, taverns, bars or canteens, snack bars or snack-like establishments, especially food trucks;
- b) Accommodation of guests, especially in hotels, youth hostels or pensi- ons;
- c) Management of a catering, party service or take-away business;
- d) Retail trade in non-distilled alcoholic beverages.

#### 23. Building Cleaner

The scope of activities of the building cleaner includes in particular:

- a) Cleaning of exteriors and interiors of buildings, facilities and equipment;
- b) Cleaning and treatment of wallpaper, wall coverings and facades;
- c) Removal of construction soiling in new construction and remodeling;
- d) Special cleaning in hospitals, laboratories, etc. and appropriate use of cleaning agents;
- e) Transport and storage of cleaning agents requiring a permit;
- f) Trade in cleaning products and accessories.

#### 24. Scaffolder

## Trade Regulation

---

The scaffolder's field of activity includes in particular:

- a) Installation and dismantling of facade scaffolding, construction hoists, emergency roofs and special scaffolding;
- b) Construction of temporary structures such as grandstands and passarelle;
- c) Planning and professional storage of the required material as well as organization and preparation of the construction site;
- d) Design and construction of construction elevators for people and materials.

### 25. Plasterer-drywall builder

The plasterer-drywall's scope of work includes, in particular:

- a) Plastering walls, ceilings and facades to protect and preserve structures;
- b) Execution of stucco and plaster structures;
- c) Creation of partition walls and ceiling cladding in drywall manner;
- d) Laying insulation for thermal, sound and fire protection;
- e) Erection and dismantling of facade scaffolding;
- f) Trade in plaster mortar and accessories.

### 26. Heating installer

The scope of activities of the heating installer includes in particular:

- a) Installation and commissioning of heating systems, thermotechnical installations and cooling water pipelines;
- b) Installation of heat generation equipment;
- c) Laying of lines;
- d) Assemble radiators, regulating valves and fittings;
- e) Maintenance and repair work;
- f) Trade in heating equipment, spare parts and accessories.

### 27. Master woodworker

The field of activity of the master woodworker includes in particular:

- a) Construction and renovation of structural timber buildings such as houses, barns, sports halls and bridges;
- b) Planning and organization of timber construction works in technical and personnel terms;
- c) Calculation and erection of roof trusses;
- d) Manufacture of stairs, doors, gates and facades;
- e) Creation of all types of scaffolding and concrete formwork;
- f) Insulation works for sound, temperature or moisture protection of buildings;
- g) Roofing and carpentry work;
- h) Trade in building materials and accessories.

#### 28. Hearing aid acoustician

The field of activity of the hearing aid acoustician includes in particular:

- a) Hearing measurements;
- b) Recommendation and fitting of suitable hearing aids and technical aids;
- c) Manufacture of hearing aids;
- d) Repair work;
- e) Counseling and care for hearing impaired people;
- f) Trade in hearing aids, spare parts and accessories.

#### 29. Debt collection expert

The field of activity of the collection expert includes in particular:

- a) Processing of debt collection dossiers from reminders to bankruptcy petitions;
- b) Preparation and monitoring of payment plans;
- c) Maintaining contacts with customers and government agencies.

#### 30. Insulation fitter

The scope of work of the insulation fitter includes in particular:

- a) Manufacture of insulation for heat, cold, moisture, noise,

Sound and fire protection;

- b) Wrapping of apparatus, fittings and pipes with insulating materials;
- c) Sheathing of insulation with sheets, foils, webs, bandages, plastic hard jackets or shaped pieces;
- d) Installation of lightweight walls and suspended ceilings and installation of insulation materials;
- e) Assembly of support and spacer structures;
- f) Testing of insulation systems and repair work;
- g) Trade in insulation materials and accessories.

### 31. Refrigeration system fitter

The scope of work of the refrigeration system fitter includes in particular:

- a) Installation and commissioning of refrigeration and air conditioning systems;
- b) Installation of motors, pumps, valves, and control and regulating equipment;
- c) Electrical installation and charging of the refrigerant with subsequent leak test;
- d) Maintenance and repair work;
- e) Trade in equipment, spare parts and accessories.

### 32. Chimney sweep

The scope of activities of the chimney sweep includes in particular:

- a) Inspection of combustion plants and fireplaces;
- b) Control, cleaning and optimization of thermotechnical equipment;
- c) Combustion control with emission measurements;
- d) Maintenance and cleaning operations;
- e) Advice on energy saving measures and fire protection.

### 33. Small Motorcycle and Bicycle Mechanic

The scope of work of the small motorcycle and bicycle mechanic includes in particular:

- a) Maintenance, inspection and repair of bicycles, electric bicycles and small motorcycles;

- b) Adjustments and repair to the engine, drive and electrical system;
- c) Attachment of auxiliary equipment and accessories;
- d) Testing and examination of two-wheelers according to official specifications;
- e) Trade in two-wheelers, spare parts and accessories.

#### 34. Pastry chef-confectioner

The field of activity of the confectioner-confectioner includes in particular:

- a) Production of pastry and confectionery products as well as snack and tra- teur items;
- b) Provision of products for sale;
- c) Management of a sales outlet.

#### 35. Design engineer

The field of activity of the design engineer includes in particular:

- a) Design, calculation and construction of individual parts and assemblies for devices, machines and plants;
- b) Creation of construction drawings on the computer;
- c) Provision of the production data and the parts lists;
- d) Elaboration and preparation of technical documentation.

#### 36. Beautician or cosmetician

The field of activity of the cosmetician includes in particular:

- a) Skin analysis and individual consultation;
- b) cosmetic facial and full body treatment and hand and foot care;
- c) Body and facial hair removal;
- d) Tinting of brows and eyelashes;
- e) Trade in cosmetic products and accessories;
- f) Permanent makeup.

#### 37. Laboratory technician

The laboratory technician's field of activity includes in particular:

- a) Research, development and production in the chemical field;

- b) Planning, execution and evaluation of experiments;
- c) Use of chemicals, equipment, computerized measuring devices and various apparatus;
- d) Operate and maintain laboratory equipment and facilities and laboratory computers.

#### 38. Agricultural machinery mechanic

The scope of activities of the agricultural machinery mechanic includes in particular:

- a) Maintenance and repair of machinery, vehicles and equipment;
- b) Manufacturing of spare parts;
- c) Conversion of machines;
- d) Measurement, diagnostic and testing work as well as commissioning;
- e) Trade in agricultural machinery, spare parts and accessories.

#### 39. Ventilation system builder

The scope of activities of the ventilation system builder includes in particular:

- a) Manufacture and installation of ventilation and air conditioning systems;
- b) Assembly of motors, fans and filters as well as control and regulating devices;
- c) Commissioning and control of the assembled equipment;
- d) Maintenance and repair work;
- e) Trade in equipment, spare parts and accessories.

#### 40. Painter

The scope of activity of the painter includes in particular:

- a) Plastering and painting walls, ceilings and facades;
- b) Treatment and coating of surfaces (corrosion protection);
- c) Elevator of wallpaper;
- d) Laying insulation for thermal, sound and fire protection;
- e) Erection and dismantling of facade scaffolding;
- f) Trade in plasters, paints, varnishes and accessories.

#### 41. Bricklayer



The mason's scope of work includes, in particular:

- a) Creation of walls, stairs and paths in the non-structural area;
- b) Execution of interior and exterior plasters, cement coatings and underlays;
- c) Construction of falsework, formwork and system scaffolding;
- d) Installation of reinforcement under the supervision of a civil engineer;
- e) simple renovation and repair work;
- f) Trade in building materials and accessories.

#### 42. Metal worker

The metalworker's field of activity includes in particular:

- a) Manufacture of doors, windows, facades, conservatories, stairs, balconies, canopies, etc.;
- b) Manufacture of steel supporting structures for halls, bridges or elevators;
- c) Execution of forging and hardening of steel;
- d) Treatment of surfaces to protect against corrosion and environmental influences;
- e) Assembly of construction parts on site;
- f) Maintenance and repair work;
- g) Trade in components, spare parts and accessories.

#### 43. Metal construction designer

The scope of activities of the metal construction designer includes in particular:

- a) Design and construction of individual parts and assemblies for metal, steel and facade construction;
- b) Carrying out the necessary calculations;
- c) Creation of construction drawings on the computer;
- d) Provision of the production data and the parts lists;
- e) Elaboration and preparation of technical documentation.

#### 44. Motorcycle mechanic

The scope of activities of the motorcycle mechanic includes in particular:

- a) Maintenance and inspection of motorcycles;
- b) Repair work on the engine, drive and chassis;
- c) Testing and inspection of motorcycles according to official specifications;
- d) optimal adjustment of vehicle components and replacement of defective parts;
- e) Installation of additional equipment and accessories;
- f) Repair of car bodies;
- g) Trade in motorcycles, spare parts and accessories.

### 45. Network electrician

The field of activity of the network electrician includes in particular:

- a) New construction and reconstruction as well as maintenance of low and high voltage cable systems, overhead lines and cable distribution cabins;
- b) New construction and conversion as well as maintenance of communication and data cable systems as well as switching and transformer stations;
- c) New construction, reconstruction and maintenance of public lighting and public transport overhead lines.

### 46. Furnace builder

The furnace builder's scope of work includes, in particular:

- a) Construction and renovation of storage stoves and fireplaces;
- b) Design and calculation of exhaust gas flows in furnaces;
- c) Preparation of sketches and drawings of furnaces;
- d) Installation and repair of fireplaces;
- e) Trade in furnaces and accessories.

### 47. Orthopedist

The field of activity of the orthopedist includes in particular:

- a) Design of orthopedic aids for people with limited ability to walk, stand or sit;
- b) Manufacture of prostheses, orthoses and rehabilitation devices;
- c) Fitting and adjustment of orthopedic remedies and aids;
- d) Maintenance and repair work;

e) Trade with orthopedic remedies and aids as well as accessories.

#### 48. Paving artist

The scope of activities of the paving technician includes in particular:

- a) Paving and slab laying work in garden and road construction;
- b) Relocation of paving stones and slabs according to different laying methods and patterns;
- c) Installation of drainage shafts and laying of pipes and conduits;
- d) Execution of bordering with curbs and setting slabs;
- e) Trade in building materials and accessories.

#### 49. Physics laboratory assistant

The field of activity of the physics laboratory technician includes in particular:

- a) Research, development and production in the materials sector;
- b) Planning, execution and evaluation of experiments;
- c) Work with substances and systems, equipment, computerized measuring devices and various apparatus;
- d) Operate and maintain laboratory equipment, facilities and computers;
- e) Manufacture of special technical aids and establishment of electrical circuits.

#### 50. Piercer or piercer

The scope of activities of the piercer includes in particular:

- a) Body modification by piercing or widening various parts of the human body;
- b) Attaching jewelry to various parts of the human body, which is applied through the skin and underlying tissue.

#### 51. Tiler

The field of activity of the panel layer includes in particular:

- a) Provide floors, walls and stairs of buildings with slabs of ceramic, mosaic, natural and artificial stone;
- b) Creation of floor and wall coverings in new and renovated buildings;

c) Trade in plates and accessories.

#### 52. Podiatrist

The scope of practice of the podiatrist includes in particular:

- a) Care for healthy and sick feet;
- b) Treatment of problems and pain in the foot, toes and toenails;
- c) Clarification of the causes of the complaints through anamnesis and possible referral of the patient to a physician;
- d) Removal of painful corns, excessive calluses and calluses;
- e) Treatment of nail fungus and ingrown or thickened nails;
- f) Modeling artificial nail replacement;
- g) Trade in foot care products, orthopedic aids and accessories.

#### 53. Polymechanic

The field of activity of the polymechanic includes in particular:

- a) Manufacture of tools, equipment parts and production devices;
- b) Use of lathes, milling, drilling and grinding machines as well as computer-controlled processing machines;
- c) Verification of production quality with high-precision measuring and testing instruments;
- d) Assembly of mechanical, pneumatic, hydraulic and electrical parts into devices, apparatus and machines;
- e) Assembly, commissioning, maintenance and repair of equipment, machinery and equipment;
- f) Trade with machines, tools and accessories.

#### 54. Private detective

The scope of activities of the private detective includes in particular:

- a) Obtaining evidence for purposes of a judicial or administrative proceeding;
- b) Making inquiries about criminal acts;

- c) Investigation of missing or concealed persons, hidden assets, persons writing anonymous letters as well as persons creating or spreading slander, suspicion or insults;
- d) Observation and control of the fidelity of employees;
- e) Providing information on private relationships.

#### 55. Pyrotechnician

The field of activity of the pyrotechnician includes in particular:

- a) Planning and execution of fireworks and other pyrotechnic effects;
- b) Assembly and disassembly of fixtures for special effects;
- c) Creation of plants and ignition devices;
- d) Provision of the necessary safety equipment and extinguishing agents;
- e) Trade in pyrotechnic products and accessories.

#### 56. Accounting and controlling expert

The scope of activities of the accounting and controlling expert includes in particular:

- a) Control, account assignment and posting of invoices and payments, taking into account tax circumstances, as well as related declaration activities;
  - b) Implementation of interim and main closings;
  - c) Settlement of payment transactions;
  - d) Supervision of the dunning process;
  - e) Processing of debt collection dossiers from reminders to bankruptcy petitions;
  - f) Preparation and monitoring of payment plans;
  - g) Advising companies on corporate governance issues;
  - h) Conducting audits for small companies within the meaning of Art. 1064 para. 1 PGR, insofar as they:
1. no member of the administration authorized to manage and represent the company

## Trade Regulation

---

in accordance with Art. 180a PGR; and

2. do not fall under Art. 350 or 400a PGR.

### 57. Tire specialist

The field of activity of the tire specialist includes in particular:

- a) Equipping motor vehicles and aircraft with tires and wheels;
- b) Repair of tires and tubes;
- c) Retreading of tires;
- d) Testing and adjustment of toe, camber and caster (chassis technology);
- e) Manufacture and repair of rubber and elastomer products;
- f) Trade in rubber and elastomer products and accessories.

### 58. Sanitary fitter or sanitary fitter

The scope of work of the sanitary fitter includes in particular:

- a) Installation of cold, hot and waste water systems, as well as gas systems;
- b) Installation of boilers and sanitary appliances and installation of fittings;
- c) Laying of lines;
- d) Maintenance and repair work;
- e) Trade in sanitary appliances, spare parts and accessories.

### 59. Carpenter

The scope of work of the carpenter includes in particular:

- a) Production of building elements such as windows, doors, cabinets, kitchen elements, etc., as well as individual furniture and interior fittings;
- b) Preparation of sketches, designs, samples and technical drawings for pieces of furniture;
- c) Processing of solid wood, wood materials, plastics and metals;
- d) Coating, treatment and finishing of wood surfaces;
- e) Maintenance and repair work;
- f) Trade in wooden components and accessories.

### 60. Safety specialist

The field of activity of the safety specialist includes in particular:

- a) Guarding of businesses, buildings, facilities, construction sites, land and movable property;
- b) Operation of emergency call centers;
- c) Entrance and security checks as well as porter services and personal security;
- d) Carrying out and monitoring the transportation of money and valuables.

#### 61. Blind fitter

The scope of activities of the blind fitter includes in particular:

- a) Installation of blinds systems;
- b) Assessment of the ground, connection of the drive motors to the power supply and programming of the control system;
- c) Maintenance and repair work of existing systems.

#### 62. Plumber

The sphere of activity of the tinsmith includes in particular:

- a) Manufacture and installation of gutters and pipes, chimney and pipe flashings, facade and skylight cladding;
- b) Waterproofing of the building envelope;
- c) Creation of lightning protection systems;
- d) Manufacture of technical components for industry and commerce;
- e) Maintenance and repair work;
- f) Trade in sheet metal parts and accessories.

#### 63. Blasting specialist

The field of activity of the blasting specialist includes in particular:

- a) Planning, execution and management of blasting operations;
- b) Removal, trenching, structural and safety blasting;
- c) Development of safety plans for blasting operations.

#### 64. Road builder

## Trade Regulation

---

The field of activity of the road builder includes in particular:

- a) Construction and maintenance of roads, squares, paths, traffic islands, traffic circles, etc.;
- b) Installation of drainage manholes and laying of pipes and lines;
- c) Execution of bordering with curbs and setting slabs;
- d) Relocation and laying of edging, paving and slabs;
- e) Greening of unpaved road surfaces;
- f) Trade in building materials and accessories.

### 65. Tattoo artist

The scope of activity of the tattoo artist includes in particular:

- a) Creation of sketches, designs and samples;
- b) Insertion of dyes into human skin or mucosa for decorative purposes;
- c) Inform about care and treatment of the fresh tattoo.

### 66. Telematician

The scope of activities of the telematics specialist includes in particular:

- a) Installation, maintenance and repair of electronic communication and information technology networks;
- b) Configuration, connection, and programming of devices such as telephones, fax machines, and computers;
- c) Commissioning of electrical equipment and installations;
- d) Maintenance and repair work and troubleshooting;
- e) Customer service and explanation of operation;
- f) Trade in equipment and devices and spare parts and accessories.

### 67. Textile technologist

The field of activity of the textile technologist includes in particular:

- a) Development, processing, finishing and testing of fibers, yarns and textile products;
- b) Bleaching, dyeing, printing, finishing and coating of fibers,



Yarns and fabrics with chemicals and dyes;

- c) Manufacture and assembly of natural and man-made fiber ropes and wire ropes;
- d) Maintenance and repair work;
- e) Trade in textile products, ropes and accessories.

#### 68. Dental technician

The dental technician's field of activity includes in particular:

- a) Manufacture of dental prostheses and orthodontic appliances;
- b) Shaping and modeling of crowns, bridges, post teeth, partial and complete dentures;
- c) Finishing the denture with porcelain, metal or plastic;
- d) Repair work.

#### 69. Carpenter

The scope of work of the carpenter includes in particular:

- a) Construction and renovation of non-structural wooden buildings in the interior and exterior;
- b) professional production of wood products such as stairs, doors, gates and facades;
- c) Erection of roof trusses;
- d) Creation of all types of scaffolding and concrete formwork;
- e) Insulation works for sound, temperature or moisture protection of buildings;
- f) Trade in building materials and accessories.

### Annex 2

(Art. 3 let. b)

#### Associated trades

1. Automotive mechatronics technician/motorcycle mechanic
2. Construction machinery mechanic/agricultural machinery mechanic

## Trade Regulation

---

3. Baker-Confectioner or Baker-Confectioner-Confectioner or Confectioner-Confectioner
  4. Plasterer / Painter
  5. Heating installer/sanitary installer/sanitary installer
  6. Design engineer/metal construction design engineer
  7. Laboratory Assistant/Physics Laboratory Assistant
  8. Ventilation system builder/plumber
  9. Metal worker/poly mechanic
  10. Paving contractor/road builder
  11. Private Detective/Security Specialist Annex 3
- (Art. 3 let. c)

### Trades requiring a permit

1. Caulker
2. Automotive specialist
3. Automotive mechatronics technician
4. Construction machinery mechanic
5. Master builder
6. Baker-Confectioner
7. Mountain guide
8. Vocational, academic and career counselor
9. Funeral director
10. Concrete worker
11. Boat builder
12. Car body repairer
13. Coiffeuse or hairdresser
14. Roofer

15. Electrical installer, electrical installation and safety expert and installation electrician
16. Electronics technician
17. Electrical project manager installation and safety
18. Vehicle mechanic
19. Facade builder
20. Meat specialist
21. Forest warden
22. Gardener
23. Hospitality, catering and party service
24. Building Cleaner
25. Scaffolder
26. Plasterer-drywall builder
27. Heating installer
28. Master woodworker
29. Hearing aid acoustician
30. Real estate agent
31. Collection expert
32. Insulation fitter
33. Refrigeration system fitter
34. Chimney sweep
35. Small Motorcycle and Bicycle Mechanic
36. Pastry chef-confectioner
37. Design engineer
38. Beautician or cosmetician
39. Laboratory technician
40. Agricultural machinery mechanic
41. Ventilation system installer

## Trade Regulation

---

42. Painter
43. Bricklayer
44. Metal worker
45. Metal construction designer
46. Motorcycle mechanic
47. Network electrician
48. Furnace builder
49. Orthopedist
50. Paving artist
51. Physics laboratory assistant
52. Piercer or piercer
53. Tiler
54. Podiatrist
55. Polymechanic
56. Private detective
57. Pyrotechnician
58. Accounting and controlling expert
59. Tire specialist
60. Sanitary installer
61. Carpenter
62. Safety specialist
63. Blind fitter
64. Plumber
65. Blasting specialist
66. Road builder
67. Tattoo artist
68. Telematician
69. Textile technologist

- 70. Organizer of package tours and intermediary of associated travel services
- 71. Dental technician
- 72. Carpenter

#### Appendix 4

(Art. 3 let. d)

#### Safety relevant trades

- 1. Automotive mechatronics technician
- 2. Construction machinery mechanic
- 3. Master builder
- 4. Mountain guide
- 5. Vocational studies and career counselor
- 6. Roofer
- 7. Electrical installer, electrical installation and safety expert and installation electrician
- 8. Electronics technician
- 9. Electrical project manager installation and safety
- 10. Forest warden
- 11. Scaffolder
- 12. Heating installer
- 13. Master woodworker
- 14. Hearing aid acoustician
- 15. Refrigeration system fitter
- 16. Chimney sweep
- 17. Small Motorcycle and Bicycle Mechanic
- 18. Design engineer
- 19. Beautician or cosmetician
- 20. Laboratory technician

## Trade Regulation

---

21. Agricultural machinery mechanic
22. Metal construction designer
23. Motorcycle mechanic
24. Network electrician
25. Furnace builder
26. Orthopedist
27. Physics laboratory assistant
28. Piercer or piercer
29. Podiatrist
30. Private detective
31. Pyrotechnician
32. Safety specialist
33. Blasting specialist
34. Tattoo artist
35. Dental technician
36. Carpenter

### Appendix 5

(Art. 24)

Verification business in the case of cross-border provision of services

1. Master builder
2. Mountain guide
3. Vocational studies and career advisor
4. Electrical installer, electrical installation and safety expert and installation electrician
5. Electrical project manager installation and safety
6. Forest warden
7. Hospitality, catering and party service
8. Master woodworker
9. Hearing aid acoustician

10. Chimney sweep
11. Design engineer
12. Beautician or cosmetician
13. Laboratory technician
14. Network electrician
15. Furnace builder
16. Orthopedist
17. Physics laboratory assistant
18. Piercer or piercer
19. Podiatrist
20. Private detective
21. Pyrotechnician
22. Safety specialist
23. Blasting specialist
24. Tattoo artist
25. Dental technician

## **VII. Hague Trust Law Convention**

Concluded in The Hague on July 1, 1985

Approval by Parliament: October 20, 2004

Entry into force for the Principality of Liechtenstein: April 1,  
2006 The signatories to this Convention,

Whereas the trust, as developed by courts of equity in common law countries, and adopted with some modifications in other countries, is a unique legal institution,

Desiring to establish common provisions on the law applicable to trusts and to settle the main issues concerning the recognition of trusts,

have decided to conclude an agreement for this purpose and have agreed on the following provisions:

### Chapter I Scope of

#### Application Art. 1

This Convention determines the law applicable to trusts and governs their recognition.

#### Art. 2

For the purposes of this Convention, the term "trust" means the legal relations created by a person, the settlor, by inter vivos transaction or in the event of death, when property has been placed under the supervision of a trustee for the benefit of a beneficiary or for a specific purpose.

A trust has the following properties:

- a) the assets of the trust constitute a separate special asset and are not part of the personal assets of the trustee;
- b) the rights relating to the assets of the trust are in the name of the trustee or in the name of another person representing the trustee;
- c) the trustee has the power and the obligation to account for, to manage, use or dispose of the assets in accordance with the trust provisions and the specific obligations imposed on him by law.



The fact that the settlor reserves certain rights and powers to himself or that the trustee himself has rights as a beneficiary does not necessarily prevent the existence of a trust.

Art. 3

The Convention applies only to trusts voluntarily established and evidenced in writing.

Art. 4

The Convention does not apply to preliminary questions relating to the validity of wills or other legal transactions by which property is transferred to the trustee.

Art. 5

The Convention shall not apply to the extent that the law determined in accordance with Chapter II does not provide for trusts or the type of trusts at issue.

Chapter II Applicable

law Art. 6

The trust shall be governed by the law chosen by the settlor. The choice of law must be express or must result from the provisions of the instrument of creation or of the document confirming the trust, where necessary,

are to be interpreted according to the circumstances of the case.

If the law chosen under paragraph 1 does not provide for trusts or the type of trusts at issue, the choice of law shall be ineffective and the law determined in Art. 7 shall apply.

Art. 7

If no applicable law has been chosen, the trust shall be governed by the law with which it has the closest connection.

In determining the law with which the trust is most closely connected, the following in particular must be taken into account:

- a) the place of administration of the trust designated by the founder;
- b) the location of the assets of the trust;
- c) the place of habitual residence or establishment of the trustee;
- d) the purposes of the trust and the places where they are to be fulfilled.

Art. 8

The law determined in Art. 6 or 7 regulates the validity of the trust, its interpretation, its effects and its administration.

This right regulates in particular:

- a) the appointment, resignation, and removal of trustees, the ability to act as a trustee, and the delegation of duties of a trustee;
- b) the rights and obligations of trustees among themselves;
- c) the right of trustees to delegate, in whole or in part, the performance of their duties or the exercise of their powers;
- d) the power of trustees to manage, dispose of, create security interests in, or acquire new assets of the trust;
- e) the powers of trustees to make investments;
- f) Restrictions on the duration of the trust and on the power to establish reserves from the income of the trust;
- g) the relations between the trustees and the beneficiaries, including the personal liability of the trustees towards the beneficiaries;
- h) the amendment or termination of the trust;
- i) the distribution of the assets of the trust;
- j) the obligation of trustees to account for their management. Art. 9

In applying this chapter, a severable portion of the trust, particularly its administration, may be governed by a different law.

Art. 10

The law applicable to the validity of the trust determines whether that law or the law governing a severable part of the trust may be superseded by another law.

Chapter III

Recognition

Art. 11

A trust established under the law determined in Chapter II shall be recognized as a trust.

At a minimum, the effect of the recognition is that the assets of the trust constitute separate property from the personal property of the trustee, that the trustee may sue or be sued in his or her capacity as trustee, and that he or she may appear in that capacity before a notary public or any person acting in an official capacity.

To the extent required or provided by the law applicable to the trust, such recognition shall have the effect, in particular, of:

- a) that the personal creditors of the trustee cannot access the assets of the trust;
- b) that the assets of the trust do not form part of the assets of the trustee in the event of the trustee's insolvency or bankruptcy;
- c) that the assets of the trust are neither part of the marital property nor of the estate of the trustee;
- d) that the assets of the trust may be claimed out if the trustee, in breach of the obligations arising under the trust, has commingled assets of the trust with his personal property or has disposed of assets of the trust. However, the rights and obligations of a third party who has the assets of the trust in his possession remain subject to the law determined by the conflict of laws rules of the forum.

Art. 12

If a trustee wishes to have movable or immovable property or rights thereto recorded in a register, he or she is authorized to do so in his or her capacity as trustee or otherwise disclosing the existence of a trust, unless prohibited by or incompatible with the law of the State in which the registration is to be made.

Art. 13

A state is not obliged to recognize a trust whose essential elements, with the exception of the choice of applicable law, the place of administration and the habitual residence of the trustee, have closer links with states that are not familiar with the legal institution of the trust or the type of trust at issue.

Art. 14

The Convention does not preclude the application of legislation more favorable to the recognition of trusts.

Chapter IV

General provisions

Art. 15

To the extent that the provisions of the law to which the conflict-of-law rules of the forum refer cannot be derogated from by operation of law, the Convention shall not prevent the application of such provisions, in particular in the following areas:

- a) Protection of minors and persons incapable of acting;
- b) personal and property effects of marriage;
- c) Inheritance law including the law of wills, in particular the compulsory portion;
- d) Transfer of ownership and security interests in rem;
- e) Protection of creditors in the event of insolvency;
- f) Protection of bona fide third parties in other matters.

If subsection (1) precludes recognition of a trust, the court shall attempt to effectuate the purposes of the trust by other legal means.

Art. 16

The Convention shall not affect the application of provisions of the law of the forum, which shall also apply to international situations without regard to conflict of laws rules.

If there is a sufficiently close connection between the subject matter of the dispute and another state, then, by way of exception, similar provisions of that state may also be given effect.

Any Contracting State may declare by reservation that it will not apply paragraph 2.

Art. 17

In this Convention, the term "law" means the rules of law in force in a State, excluding its conflict-of-law rules.

Art. 18

The provisions of the Convention may be disregarded if their application would be manifestly incompatible with public policy.

Art. 19

The Convention does not affect the powers of the States in tax matters.

Art. 20

Any Contracting State may at any time declare that the Convention shall also apply to trusts established by judicial decision.

This declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall take effect upon receipt of the notification.

Art. 31 applies accordingly to the withdrawal of this declaration.

Art. 21

Each Contracting State may reserve the right to apply Chapter III only to trusts the validity of which is governed by the law of a Contracting State.

Art. 22

The Convention shall apply regardless of the date on which the trust was established.

However, a Contracting State may reserve the right not to apply the Convention to trusts established before the Convention has entered into force for it.

Art. 23

Where a State comprises several territorial units each of which has its own rules of law in respect of trusts, a reference to the law of that State shall, in determining the law applicable under this Convention, be construed as a reference to the law applicable in the territorial unit concerned.

Art. 24

A State in which different territorial units have their own rules of law relating to trusts is not required to apply the Convention to conflicts of law between the laws of those territorial units.

Art. 25

This Convention shall not affect any other international agreement to which a State Party to this Convention is or becomes a party and which contains provisions on matters governed by this Convention.

Chapter V

Final provisions Art. 26

Any State may, at the time of signature, ratification, acceptance, approval or accession, or when making a declaration in accordance with Article 29, make the reservations provided for in Articles 16, 21 and 22.

No other reservations are permitted.

Any State Party may withdraw a reservation it has made at any time, and the reservation shall cease to have effect on the first day of the third calendar month following notification of the withdrawal.

Art. 27

The Convention shall be open for signature by States which were Members of the Hague Conference on Private International Law at the time of its Fifteenth Session.

It shall be subject to ratification, acceptance or approval; the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Art. 28

Any other State may accede to the Convention after it has entered into force in accordance with Article 30, paragraph 1.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Accession shall have effect only in relations between the acceding State and the Contracting States which have not objected to the accession within twelve months from the date of receipt of the notification provided for in Article 32. After accession, such an objection may also be raised by a member State at the time when it ratifies, accepts or approves the Convention. Objections shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Art. 29

A State which has two or more territorial units in which different systems of law are in force may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all its territorial units or only to one or more of them, and may modify this declaration at any time by submitting a new declaration.

Such a declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands with an express designation of the territorial units to which the Convention applies.

If a State does not make a declaration under this Article, the over- income shall extend to all territorial units of that State.

Art. 30

The Convention shall enter into force on the first day of the third calendar month following the deposit of the third instrument of ratification, acceptance or approval provided for in Article 27.

Thereafter, the Convention shall enter into force:

- a) for any State ratifying, accepting or approving it subsequently, on the first day of the third calendar month following the deposit of its instrument of ratification, acceptance or approval;
- b) for each acceding State, on the first day of the third calendar month following the expiration of the period provided for in Art. 28;
- c) for a territorial unit to which the Convention has been extended in accordance with Article 29, on the first day of the third calendar month following the notification provided for in that Article.

Art. 31

Any State Party may denounce this Convention in writing by formal notification addressed to the Ministry of Foreign Affairs of the Kingdom of the Netherlands, the Depositary of the Convention.

The termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Depositary, or on a later date specified in the notification.

Art. 32

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the Member States of the Conference and the States which have acceded in accordance with Article 28:

- a) any signature, ratification, acceptance and approval in accordance with Art. 27;
- b) the date on which the Convention enters into force in accordance with Article 30;
- c) any accession and any objection raised to an accession in accordance with Art. 28;
- d) any extension under Art. 29;

e) any declaration under Art. 20;

f) any reservation and any withdrawal of a reservation under Art. 26;

g) any termination under Art. 31.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, this 1st day of July 1985, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands and shall be receivable by any State which, at the time of the Fifteenth Session, is a Party to this Convention.

of the Hague Conference on Private International Law was a member of the Conference, a certified copy shall be transmitted through diplomatic channels.



## VIII. Commercial Register Ordinance

from February 11, 2003

Based on Art. 118 para. 2, Art. 944 para. 5, Art. 945 para. 4, Art. 955a para. 1, Art. 955b para. 5, Art. 956 paras. 3 and 4, Art. 959 para. 4, Art. 976 and 990 para. 3 of the Persons and Companies Law (PGR) of January 20, 1926, LGBl. 1926 No. 4, as amended, the Government decrees:

### I. General provisions Art. 1

#### *Subject and purpose*

- 1) This regulation governs the establishment and maintenance of the Commercial Register.
- 2) It serves in particular to:
  - a) to ensure that the commercial register is kept up to date;
  - b) ensure a fast registration procedure; and
  - c) to enable the public to inspect the registered data and supporting documents.

### Art. 2

#### *Scope*

Insofar as the law and the ordinance do not contain any special provisions, the provisions on the commercial register shall also apply *mutatis mutandis* to the register of matrimonial property rights.

### Art. 3

#### *Terms; Designations*

- 1) For the purposes of this Regulation mean:
  - a) "Diary, main register, book or tab" means the carriers of the records of the Commercial Register in paper form; if the records of the Register are kept by means of electronic data processing, these terms refer to the appearance on the screen or the printout on paper;
  - b) "Entry, deletion and correction" means the operations of recording on paper; if the register is kept by means of electronic data processing, these terms refer to functions of the computer program used.
- 2) The designations of persons and functions used in this Ordinance shall be understood to mean members of the female and male sexes.

Art. 4

*Register language*

- 1) Entries in the register are made in German. The registration of foreign language versions of the company remains reserved.
- 2) Supporting documents may be submitted in another language. If this impairs the inspection of third parties, the Office of Justice may request a certified translation.
- 3) In the case of domiciliary companies, at the discretion of the Office of Justice, entries may be made in a foreign language in addition to German, but Latin letters must be used.
- 4) In the case of entries in foreign languages and names of registered persons of foreign origin, any diacritical marks must also be entered.

The Company shall be entitled to transfer the shares in the Company to the commercial register, provided that there are no technical reasons for not doing so.

Art. 5

*Correctness of the entries*

- 1) Entries must be made carefully by hand or using a typewriter. Corrections by chemical or mechanical means or by means of interlineations are prohibited.
- 2) Typographical errors may be corrected in the margin; corrections must be acknowledged.
- 3) Inaccuracies that come to light after the registration has been made shall be corrected by a new registration, which shall be pointed out accordingly.
- 4) If the register is kept by means of electronic data processing, each amendment shall be recorded in the amendment log of the tab. The log must show the type of change, the date and time, and the identification of the employee of the Land and Public Registry who made the change.

Art. 6

*Publicity of the register*

- 1) Entries in the Commercial Register, including the supporting documents for the entries, are public.
- 2) Upon payment of the established fees, the Office of Justice shall permit inspection of the register and supporting documents within the limits of the law.

Upon request, it shall issue extracts from the register and certify that a particular company is not registered under its own name.

3) Excerpts and certificates must always be issued in German. They may also be issued in another official language of an EEA member state; however, there is no entitlement to this.

4) Extracts and certificates for domestic official use are to be provided free of charge.

5) The Office of Justice is entitled to provide information on ongoing registration proceedings also to third parties. Information on ongoing preliminary examination proceedings will only be provided to third parties on the written order of the judge or the public prosecutor's office.

HRV

## II. The commercial register

### A. Establishment of the Commercial Register

#### 1. In general

#### Art. 7

##### *Contents of the Commercial Register*

1) Facts and circumstances relating to individual legal relationships and legal entities are recorded in the Commercial Register. These are:

- a) commercial and non-commercial sole proprietorships and details of those who wish to register without a company name;
- b) commercial and non-commercial procuratorships, as well as representatives to be appointed by associations or companies or otherwise in accordance with the provisions of the law on persons and companies;
- c) Municipalities and their representatives;
- d) General and limited partnerships, including limited partnerships and general partnerships with limited liability;
- e) associates, including the European Company (*Societas Europaea*; SE) and the European Cooperative Society (*Societas Cooperativa Europaea*; SCE);
- f) independent trades under public law;
- g) Branch offices;
- h) Trusteeships;
- i) European Economic Interest Groupings (EEIGs);

k) matrimonial property law;

l) Investment funds, collective trusts (unit trusts) and investment companies.

2) Where reference is made in this Ordinance to legal relationships or legal entities to be registered or recorded, this shall be understood to mean those listed in paragraph 1.

#### Art. 8

##### *Type of registration*

1) The certification of the registrable facts takes place:

a) by entries (changes) and deletions;

b) by correcting illegal and incorrect entries, unless the defect has been cured by law as a result of the entry.

2) The certification of facts that create rights is effected by registration, those that change rights by amendment, and those that negate rights by deletion.

#### 2. Diary Art. 9

##### *Content and form*

1) All entries are recorded in the diary.

2) The diary entry includes:

a) the complete registration text;

b) A detailed fee order; and

c) a list of the supporting documents on which the registration is based.

3) The diary entries are to be recorded on loose sheets of paper, kept in an orderly manner and bound in by year.

4) Diary entries are to be annotated with:

a) the consecutive diary number, the counting of which starts with each new calendar year;

b) the date;

c) the signature of the employee of the Office of Justice responsible for the registration; and

d) the company number of the legal entity concerned by the registration.

3. Main Register

Art. 10

*Form*

- 1) The main register shall be kept in the form of a card index, with a separate card index sheet for each legal relationship or legal entity, from which the facts or legal relationships to be entered can be seen.
- 2) The index is kept in tabular form. The layout of the tables must be adapted to the information content of the entries for the individual legal forms. Each column of the table corresponds to a heading of the entry.
- 3) Two or three reference columns are to be kept at the head of the document, recording the reference number of the entry, amendment or deletion of the contents of the subsequent heading.
- 4) The table columns shall be headed with the heading indicating the content of the facts to be included in the column.

Art. 11

*Content*

- 1) The head of each index sheet contains:
  - a) the company number;
  - b) the legal form;
  - c) the date of the first registration;
  - d) the date of deletion;
  - e) a reference to any previous index or entry in the commercial register; and
  - f) the reference to the transfer to a new index sheet.
- 2) The columns of the heading contain the content of the entry on incorporation, amendment or deletion.
- 3) If there is no more room in a card index for the next entry, the valid data must be transferred to a new card index. The transfer can also be made for the sake of better clarity. Appropriate notations of the transfer must be made on the previous and the new index sheet.

Art. 12

*Recording of entries and deletions*

- 1) The entry is made line by line, starting with line 1. References in the reference columns are made by including the line number in the reference column.
- 2) If a carryover from another or earlier record sheet takes place, the information shall be included on line 0. Under the information about the diary entry and the announcement, the note "omission" is to be included.
- 3) In case of any subsequent change, the changed facts shall be deleted under note in the reference column for changes. The entry of the new facts is made in the corresponding heading column of the subsequent row under Note in the reference column for entries.
- 4) If facts are to be deleted, the facts to be deleted shall be deleted under reference in the reference column for deletions.
- 5) If the legal relationship or the legal entity is to be deleted, the entry is to be crossed out diagonally in red ink and terminated with a black horizontal line. The reason for the deletion is mentioned next to the order number and the date of deletion.

4. Company directory Art. 13

*Company directory*

- 1) An alphabetical list of registered companies must be kept in addition to the main register. This list of companies also includes the names of the deposited foundations, but not those of trusteeships pursuant to Art. 897 et seq. PGR.
- 2) If the main register is kept as a card index and the tabs are arranged alphabetically by company, the company directory can be dispensed with. Likewise, a separate company directory can be dispensed with if an electronic directory is available.

5. Keeping the commercial register by means of electronic data processing

Art. 14

*Principle*

- 1) The main register as well as the registers may be kept as records by means of electronic data processing.
- 2) If the main register is kept by means of electronic data processing, the diary may also be created as an electronic record. The electronic document must be archived in such a way that it cannot be subsequently modified.

can.

Art. 15

*Data security*

- 1) The data must be managed in a suitable database that meets the highest security standards, has a sufficient distribution and can be operated independently of the manufacturer.
- 2) The Office of Justice prepares operating regulations, which must be approved by the government and regulate the following points:
  - a) Concept for securing data and programs against misuse by unauthorized persons;
  - b) Concept for access rights of administrators and users to data and programs;
  - c) Catalog of measures to be taken in the event of malfunctions and failures of the programs and/or hardware;
  - d) Concept for periodic backup of data to remote media;
  - e) Disaster concept;
  - f) Concept for the maintenance of data, programs and hardware.

HRV

B. Archiving

1. In general

Art. 16

*Preservation of the application files*

- 1) The files belonging to one entry shall be marked with the date and the serial number of the diary. Several files belonging to the same entry shall be kept in one envelope, which shall be marked with date and serial number.
- 2) All files concerning the same legal relationship or the same legal entity shall be united in one envelope. The envelope shall be marked with the company name, the name or designation of the legal relationship or legal entity, the date and the company number.
- 3) The certificates of notices shall be kept with the files concerned and, where there are no other files, like registration vouchers.
- 4) The files are to be kept in their original condition. They are to be carefully

handle and protect from damage and contamination.

5) The Office of Justice shall keep a record of the files.

Art. 17

*Preservation of registers and directories*

1) All registers must be kept carefully and must not be destroyed.

2) The Office of Justice shall keep a register of all registers.

Art. 18

*Inspection of the files*

1) The applications and supporting documents relating to a registration are public and may be inspected by anyone who can credibly demonstrate a legitimate interest. Special legal provisions remain reserved.

2) The receipts shall be organized and stored in such a way that they are always at hand.

Art. 19

*Issuance of files*

1) If original files have to be handed over, a certificate of receipt must be requested from the borrowing authority in all cases, which must be placed in the archives together with a certified copy of the handed-over file in its place.

2) Original files may not be taken out of the country. Any deviating provisions of international treaties remain reserved.

Art. 20

*File destruction*

1) The documents belonging to the main register may be destroyed only after 30 years have passed since the deletion of the legal relationship or the legal entity to which they refer.

2) They are to be handed over to the Office of Culture for this purpose. The latter shall destroy the documents in an appropriate manner or store them without restriction if there is an interest in doing so.

2. Electronic archiving

Art. 21



*Electronic archiving*

- 1) With the approval of the Government, the Office of Justice may create electronic images of the filings and supporting documents associated with a registration and store them in an electronic filing system.
  - 2) The electronic archiving system shall be selected and organized in such a way that:
    - a) the origin of the stored documents is traceable (logging);
    - b) the electronic document is a faithful copy of the original (fidelity to the original); and
    - c) a subsequent and trace-free change of the stored documents is excluded (irrevocability).
  - 3) The electronic images must be managed in a database. The provisions of Art. 15 apply mutatis mutandis to the electronic archive.
  - 4) The electronic image must be created immediately after the diary entry.
  - 5) Pages stapled together may be separated for reading into the archival system. The pages of a domestically produced public document may be separated if they are reunited immediately after scanning.
  - 6) The seal and band of a foreign notary may not be broken.
- C. Announcements Art. 22

*Form of publication*

- 1) Entries in the Commercial Register that are subject to publication are published in full without delay by the Office of Justice in the official organs of publication, unless publication is required only in part or in excerpts by law or ordinance. They may also be published in electronic form.
- 2) In cases where the law does not require publication in the official gazettes, entries shall be published in electronic form.
- 3) The Office of the Judiciary shall maintain a web site for the publication of registrations in electronic form.

Art. 23

*Data reference*

For the purpose of distinguishing between operating companies or domiciliary companies, which is necessary for the form of the notice, the Office of Justice shall be entitled to obtain the relevant information from the Tax Administration in an appropriate manner.

Art. 24

*Electronic information service*

- 1) The Office of Justice may establish an electronic information service.
- 2) The information service is designed in such a way that anyone can subscribe to certain companies against payment of a fee and receive a notice from the Office of Justice by fax or in a suitable electronic form (e-mail) when a new notice has appeared concerning a subscribed legal relationship or legal entity.
- 3) Instead of a notice, the subscriber can also be sent the entire content of the announcement.
- 4) The Office of Justice may offer other electronic information services, usually for a fee.

D. Registration procedure

1. In general

Art. 25

*Truth of the entries*

- 1) All entries in the Commercial Register must be true, must not give rise to any deception and must not be contrary to any public interest.
- 2) If, after the execution of an entry, it turns out that it does not meet these requirements, it must be amended or deleted in the procedure pursuant to Art. 968 PGR.

Art. 26

*Entry in the diary*

- 1) The entries shall be recorded in the diary by the Office of Justice without delay as soon as the conditions for doing so are met.
- 2) Entries shall be dated and given an ordinance number beginning each year and signed by the appropriate employee of the Office of the Judiciary.

- 3) Instead of signing each individual diary entry, a list of entries for one day may be prepared, which is signed by the responsible employee of the Office of Justice.
- 4) The list must include:
  - a) the diary number;
  - b) the date;
  - c) the type of registration;
  - d) the company name or at least the company number; and
  - e) the name of the employee of the Office of Justice responsible for the registration.

Art. 27

*Content of the registration*

- 1) The law and the regulation determine the content of the entry in the Commercial Register.
- 2) Facts whose registration is not provided for by law may be registered only if the public interest justifies giving them effect vis-à-vis third parties.
- 3) The Office of Justice shall decide at its discretion whether a fact not intended for registration may nevertheless be entered in the Commercial Register.

Art. 28

*Duty of examination of the Office of Justice*

- 1) Before the Office of Justice makes a registration or a deposit of documents, it has to check whether the requirements according to the law and the ordinance are fulfilled.
- 2) When registering legal entities or depositing documents, it must be checked in particular whether the articles of association do not contradict any mandatory provisions and have the content required by law.
- 3) Compliance with formal rules and regulations of public law shall be reviewed by the Office of Justice ex officio.
- 4) If mandatory provisions of private law are violated, the Office of Justice is entitled to intervene only if they were enacted to protect public interests or third parties.

5) The Office of Justice makes its practice available to the public in an appropriate form.

2. Registration

Art. 29

*Form of registration*

- 1) The facts to be entered in the Commercial Register may be notified orally or in writing to the Office of Justice.
- 2) In an oral application, the person or persons required to file an application declare to the Office of Justice that they wish to file a particular registration and also explain the content of the registration. They must then submit the supporting documents required for the registration.

Art. 30

*Declaring persons*

- 1) The law and the ordinance determine who is responsible for filing an entry in the Commercial Register.
- 2) If more than one person is required to file the application and the law does not provide otherwise, it shall be sufficient for one person to sign the application.
- 3) Those obliged to register must sign the registration letter in person.

Art. 31

*Oral and written application; signature*

- 1) In the case of oral registration, the registering persons sign the registration in front of the competent employee of the Office of Justice. They must prove their identity. After signing, the competent employee of the Office of Justice shall certify the signatures.
- 2) In the case of a written application, the signatures must be authenticated. However, signatures affixed to a later application need only be authenticated if they have not been affixed earlier for the same legal relationship or the same legal entity, unless the Office of Justice has reason to doubt their authenticity.
- 3) The application shall designate:
  - a) Natural persons: with the surname, at least one full first name, nationality, date of birth and place of residence.

Office address;

b) legal entities and commercial companies: with the name or company name, legal form and registered office.

4) If the Office of Justice produces the text of the written application itself, it shall be entitled to charge the fee specified in the Fee Regulation for this purpose.

Art. 32

*Signature in special cases; heirs*

1) If heirs have to sign the application, executors, liquidators of the estate or other representatives who are to be regarded as authorized to do so under the circumstances may also sign in their place.

2) In the event of the death of the owner of a sole proprietorship, the registration of a single heir is sufficient for its cancellation if the business has ceased.

Art. 33

*Change of business location; information of a personal nature*

1) The change of the place of business (address), if the registered office remains the same, may be notified by an authorized signatory of the legal relationship or legal entity registered in the Commercial Register.

2) A change in the details of the name, nationality, place of residence or registered office of a person entered in the Commercial Register may be notified by the person himself/herself.

3) The withdrawal of a person subject to registration may be submitted by the person concerned to the Office of Justice for the implementation of the

Cancellation must be registered. He must submit the necessary supporting documents for this purpose. The Office of Justice shall notify the Company of the cancellation without delay.

Art. 34

*Company signature*

1) The person authorized to sign the name of the company shall sign it at the Office of Justice or submit it in a certified form. The signature shall be added to the name of the company, with or without a designation of the capacity in which the representation takes place.

2) Authorized signatories must sign in such a way that they add a suffix to the company name indicating their procuration and their signature.

3) All subsequent registrations that are not new company signatures must be accompanied only by the personal signatures of the persons required to register the company.

4) If a company is managed in several languages, only one company signature in each language must be attached to the application. Subject to compliance with this requirement, an authorized signatory need only sign his name once.

### 3. Registration documents Art. 35

#### *Principle*

1) The supporting documents on which an entry is based must be listed individually at the end of the entry.

2) Except as otherwise provided by law, signatures on supporting documents need not be notarized if they have already been notarized on the registration letter or other supporting documents or are known to the Office of Justice.

#### Art. 36

#### *Minutes and circular resolutions*

1) If the facts to be registered are based on resolutions or elections of organs of a legal entity, then, unless the law provides for a

public deed prescribes, the minutes of the body, a copy certified by the chairman of the meeting and the recording secretary, or an extract thereof so certified, shall be filed as evidence of registration.

2) Upon payment of the fee specified in the Fee Regulation, the Office of Justice may confirm the conformity of the extract with the original submitted to it or produce the extract itself.

3) A certified extract from the minutes of the body of a legal entity need not be provided if all members of that body sign the registration, unless the law prohibits written resolutions.

#### Art. 37

#### *Public documents; certification of conformity*

1) If the law provides for the establishment of the fact to be entered in the Commercial Register, its amendment or its deletion by a public deed, the original or a certified copy thereof shall be submitted to the Office of Justice.

2) An authentic instrument issued abroad may be accepted if it has been issued by an authenticator competent for the place of issue. The factual and local competence must be proven at the request of the Office of Justice.

3) If the document was drawn up by a notary outside the EEA, it must be submitted to the Office of Justice with an apostille or certification of the foreign government with over- certification by the competent diplomatic or consular representation of the Principality of Liechtenstein, subject to deviating provisions of state treaties.

Art. 38

*Statutes; certification of conformity*

1) The copy of the articles of association of a legal entity to be submitted to the Office of Justice shall be certified by the notary who certified the resolutions of the body concerned.

2) If the law does not provide for a public deed for the establishment of a legal entity or the amendment of the articles of association, the articles of association shall be signed by a public deed.

the founders, a member of the board of directors, foundation or trustees or a member of the supreme body to sign.

3) Upon request, the Office of Justice may certify the conformity of an exemplar of the articles of association with the current articles of association contained in the register file for a fee.

Art. 39

*Commercial company and association identity cards*

1) An excerpt from the Commercial Register must be provided for trading companies and legal entities with their registered office abroad.

2) If an extract from the Commercial Register is not available, an equivalent document on the legal existence of the commercial company or legal entity shall be provided.

4. Incomplete application Art. 40

*Principle*

1) If an application is not signed in accordance with the regulations or if not all of the prescribed application documents can be provided, the registration may nevertheless be made if special circumstances justify an exception.

2) Special circumstances exist in particular if there is a public interest in the registration and formal registration requirements cannot objectively be met by the applicants.

3) However, registration shall not take place if the applicants do not comply with regulations issued for the protection of third parties or in the public interest.

#### 5. Deletions and amendments Art. 41

##### *Deletions and changes*

1) Deletions and amendments shall be treated procedurally as new entries. When deleting a legal relationship or

of a legal entity, the reason shall be stated. The dissolution of a company is treated as a change.

2) If authorized signatories or other authorized representatives who are not members of bodies of legal entities are deleted, the reason for deletion need not be mentioned.

#### 6. Registration obligation Art. 42

##### *Principle*

1) Anyone who operates a commercial, manufacturing or other business conducted in a commercial manner is obliged to be entered in the Commercial Register at the place of his principal place of business (Art. 945 Para. 1 PGR).

2) The obligation to register begins with the opening of the business.

3) For the purposes of this Ordinance, a trade shall be deemed to be an independent economic activity aimed at permanent gain. The pursuit of profit is not a prerequisite.

#### Art. 43

##### *Types of trades subject to registration*

1) Commercial enterprises include in particular:

a) the acquisition of immovable and movable property of any kind and the resale of the same in unaltered or altered form;

b) the operation of money, bill of exchange, securities, stock exchange and collection transactions;

c) acting as a commission agent, agent or broker;

d) the fiduciary and trustee business and the activity as consultant;

e) the transport of persons and goods of any kind and storage



of merchandise;

f) the communication of news and information of any kind and in any form;

g) the insurance companies;

h) the publishing business.

2) Manufacturing trades are trades that produce new or refined products by processing raw materials and other goods with the aid of machines or other technical aids.

3) Other trades conducted in a commercial manner include:

a) those which are not commercial or manufacturing trades, but which, by the nature and extent of the business, require commercial operation and orderly accounting;

b) the activity as a lawyer, doctor, dentist, veterinarian, pharmacist, chiropractor, surveyor, architect, engineer and journalist as well as other freelance activities, provided that these are connected with an activity subject to registration;

c) the operation of a school.

#### Art. 44

##### *Exemptions from the obligation to register; annual turnover*

1) The trades referred to in Art. 43 Para. 1 Letters a, e and h and the trades referred to in Art. 43 Para. 2 and 3 are exempt from the obligation to register if their annual turnover does not exceed the sum of 300,000 francs.

2) Independent trades under public law are only subject to registration if public law does not exempt them from registration.

#### Art. 45

##### *Time determination of the annual turnover*

1) The decisive factor is the turnover (gross revenue) in the twelve months immediately preceding the date of the examination of the obligation to register.

2) If a business has been in operation for less than one year, the expected turnover is the measure, calculated for a full year on the basis of the result achieved since the opening of the business.

#### Art. 46

##### *For multiple operations*

If the owner of a trade subject to registration by its nature does not reach the turnover provided for in Art. 44 par. 1,

another trade, then even if this would not in itself be subject to the registration obligation, the annual turnover from the secondary trade must also be included in the relevant annual turnover.

#### 7. Official procedures Art. 47

##### *Compulsory registration*

1) Anyone who is obliged to be entered in the Commercial Register and fails to fulfill this obligation shall be requested by the Office of Justice, with reference to the provisions and the threat of an administrative fine, to apply for registration within 14 days.

2) The requested persons are obliged to provide the information necessary for the examination of the obligation to register and for the registration and to submit existing business records.

3) If the application is not filed or an objection is not lodged within the set time limit, the Office of Justice shall order the registration *ex officio*. At the same time, the administrative fine shall be imposed.

4) In addition to the content provided by law and regulation, the indication of the registration shall be included *ex officio*.

#### Art. 48

##### *Registration at the request of third parties*

1) The registration may also be requested by third parties. The request must be substantiated.

2) The Office of Justice shall issue a request for registration to the person or persons required to register if it can conclude from the circumstances that the prerequisites for the obligation to register are met.

3) The person requesting the registration shall not be entitled to party rights in the proceedings.

4) The representative of public law appointed by the government for the individual case or permanently shall have the right to demand the registration; he may request that any registration entries of any kind that are in conflict with the right or the facts be corrected or deleted.

and appeal against relevant decisions of the Office of Justice.

#### Art. 49

*Forced induction of changes and deletions*

- 1) If an entry in the Commercial Register no longer corresponds to the facts, the Office of Justice shall request the person or persons required to file the application to make the necessary amendment or to delete the entry, referring to the regulations.
- 2) The party or parties required to file the notification shall be given a reasonable period of at least 30 days to comply with the obligation to file the notification.
- 3) The summons shall be issued under threat of an administrative fine by registered letter or official delivery.
- 4) If the application is not filed or an objection is not lodged within the set time limit, the Office of Justice shall order the registration *ex officio*. At the same time, the administrative fine shall be imposed.
- 5) In addition to the content provided by law and regulation, the indication of the registration shall be included *ex officio*.

Art. 50

*Determination of the entities subject to registration and the changes that have occurred*

- 1) The Office of Justice is obliged to identify the owners of trades subject to registration and to bring about their registration. Furthermore, the Office of Justice must determine the registrations that no longer correspond with the facts (Art. 988 PGR).
- 2) At least once every two years, the Office of Justice shall request the municipal or administrative authorities to notify it of newly established trades or of changes in registered facts by submitting a list of the registrations concerning their jurisdiction. The government may also order another investigation procedure that serves the same purpose.

Art. 51

*Costs of the procedure*

- 1) In the case of registrations made in proceedings under Articles 47 to 49, the parties required to register shall bear both the fees incurred and any costs of the proceedings.
- 2) If a third party has requested that a registration, amendment or deletion be made, the third party shall bear the full costs of the proceedings if the proceedings were initiated maliciously or recklessly.

3) The Office of Justice may request an advance payment to cover such costs if the request appears to be unfounded after the first summary examination.

E. Special provisions on the registration of individual legal forms and legal relationships

1. In general Art. 52

*Principle*

1) If a company is managed in several languages, all versions used in business dealings must be entered in the Commercial Register.

2) In the cases specified by law, the business premises or the office of the management must be stated in the registration as the address of the business or the address of the representative, indicating the street and house number.

3) In the case of sole proprietorships, general partnerships and limited partnerships, the nature of the business and, in the case of associations, their purpose must be entered briefly and factually. In the case of an exceptionally extensive purpose, the Office of Justice has the authority to limit the purpose to the main purpose. In this case, the shortening of the purpose must be indicated by adding the word "extract" in brackets.

4) Subject to the provisions on the formation of companies, all persons to be mentioned in any capacity in the Commercial Register must have, in addition to their surname, at least a full first name, date of birth, nationality and place of residence or domestic address.

In the case of foreign locations, the nationality code and the postal code of the location must be included.

2. Sole proprietorship

Art. 53

*Application and content of the registration*

1) The application for registration of a sole proprietorship in the Commercial Register must contain information on the following facts:

- a) the company name, registered office and, if applicable, the address for service of the company;
- b) the object of the undertaking or the purpose;
- c) the owner and any other persons authorized to represent the company;
- d) the representation of the company.

2) The registration is made on the basis of the information in the application.

3) If the company takes over a business or continues an existing business when it is established, a corresponding note must be included in the entry.

4) Changes in the registered facts shall be notified and registered in the same manner as the new registration.

### 3. General and limited partnership Art. 54

#### *Application and content of the registration*

1) The application must contain the facts prescribed by law for registration (Art. 690 para. 2 and Art. 734 para. 2 PGR).

2) If the company takes over a business or continues an existing business when it is established, a corresponding note must be included in the entry.

3) If a limited partner's contribution is not paid in full in cash, the specific valuation of the assets contributed or the amount of the claim contributed or offset must be stated in the registration and entered in the commercial register.

4) The registration is made on the basis of the information in the application. If there is any doubt as to whether a general partnership or a limited partnership exists, the Office of Justice may request the partnership agreement as evidence.

5) Changes in the registered facts shall be notified and registered in the same manner as the new registration.

### 4. Public limited company

#### *Receipts*

#### Art. 55

##### *a) for successive formation*

1) The following documents must be submitted to the Office of Justice together with the registration of a joint-stock company established by successive proceedings (Art. 290 PGR):

a) the public deed establishing the Articles of Association;

b) the draft statutes signed by all founders;

c) the subscription certificates pursuant to Art. 283 PGR;

d) the prospectus, if a public offering for subscription has taken place;

e) the minutes of the decision of the general meeting of subscribers, about

the approval of the subscriptions and of the payments made, as well as on the appointment of the management and, if necessary, of the auditors;

f) certification by the office designated in the invitation to the subscription that at least 25% of the amount on each share has been paid in for the exclusive disposal of the future administration of the Company, unless the paying agent is indicated in the minutes of the General Meeting of Subscribers;

g) proof that the contributions promised by the subscribers correspond to the total issue amount of the shares, unless this can be seen from the minutes of the General Meeting;

h) the declaration of the elected members of the administration that the election is accepted, unless this is stated in the act of establishment or in the application;

h) the declaration of the auditors that the election is accepted or the declaration that the review pursuant to Art. 1058a PGR is waived, unless this is stated in the deed of incorporation;

i) the declaration of the founders that no contributions in kind, acquisitions in kind or settlements have been made and no founder's advantages or other special benefits have been granted, or that no other contributions in kind, acquisitions in kind or settlements have been made or no founder's advantages or other benefits have been granted other than those mentioned in the articles of association.

2) In the case of formation with contributions in kind, acquisitions in kind, offsetting or special benefits, the following additional documents must be submitted with the registration:

a) the full expert report or proof that the founders have waived it;

b) the contribution-in-kind agreements and, if available, the acquisition-in-kind agreements with enclosures.

#### Art. 56

##### *b) for simultaneous formation*

1) The following documents must be submitted to the Office of Justice together with the registration of a joint-stock company formed by simultaneous procedure (Art. 290 PGR):

a) the publicly certified act of incorporation;

b) a certified copy of the Articles of Incorporation signed by all founders;

- c) the bank certificate confirming the payment of the contributions to the share capital stipulated by law or by the Articles of Association;
  - d) the declaration of the elected members of the administration that the election is accepted, unless this is stated in the act of establishment or in the application;
  - d) the declaration of the auditors that the election is accepted or the declaration that the review pursuant to Art. 1058a PGR is waived, unless this is stated in the deed of incorporation;
  - e) the declaration of the founders that no contributions in kind, acquisitions in kind or settlements have been made and no founder's advantages or other special benefits have been granted, or that no other contributions in kind, acquisitions in kind or settlements have been made or no founder's advantages or other benefits have been granted other than those mentioned in the articles of association.
- 2) In the case of incorporation with contributions in kind, acquisitions in kind, offsetting or special benefits, Art. 55 para. 2 shall apply *mutatis mutandis*.

Art. 57

*Checking the establishment*

- 1) The Office of Justice checks whether the requirements for the establishment of a joint-stock company have been met, in particular whether the publicly certified act of establishment contains the following information:
- a) the founders and, if applicable, their representatives;
  - b) the declaration to establish a stock corporation;
  - c) confirmation that the statutes are established;
  - d) the declaration by each founder of the subscription of his shares, specifying the number, par value or quota, type, category and issue amount of the shares, as well as his unconditional obligation to make a cash contribution corresponding to the issue amount;
  - e) the appointment of the members of the Board of Directors;
  - f) the appointment of the managing directors;
  - g) the appointment of the auditors or the waiver of the review pursuant to Art. 1058a PGR;
  - h) the appointment of the representative (Art. 239 PGR);
  - i) the way of exercising the representation;

k) the statement of the founders that:

1. all shares are validly subscribed;
2. the pledged deposits correspond to the total issue amount;

l) the legal and statutory requirements for the payment of the contribution have been met;

m) the naming of the individual supporting documents and the confirmation by the certifying officer that they have been presented to the founders;

n) the signature of the founders or their representatives.

2) In the case of qualified incorporation, the Office of Justice also verifies that the expert report has the content required by law, if an expert report is required.

Art. 58

*Capital increase; supporting documents*

Together with the registration of the capital increase (issue of new shares; Art. 295 PGR), the following supporting documents must be submitted to the Office of Justice:

a) the public document on the resolution of the General Assembly and the amendment of the Articles of Association;

b) a certified copy of the amended Articles of Association;

c) the annual financial statements or the interim financial statements if the capital has been paid up from freely disposable equity, or a confirmation from the auditors;

d) as far as necessary, the complete expert report;

e) the contribution-in-kind agreements and, if available, the acquisition-in-kind agreements with enclosures;

f) a certificate showing the bank at which the deposits are held;

g) if the shares were offered for public subscription, the prospectus;

h) the declaration of the management that no contributions in kind, acquisitions in kind or offsets have been made and no founder's advantages or other special advantages have been granted, or that no other contributions in kind, acquisitions in kind or offsets have been made or no other founder's advantages or other advantages have been granted other than those mentioned in the Articles of Association.

Art. 59



*Public certificate; examination*

1) The Office of Justice shall verify that the public document on the decision of the General Assembly contains the following information:

a) the total nominal amount by which the share capital is to be increased and the amount of the contributions to be made thereon, at least the statutory minimum, and the issue price;

b) the number, par value or quota and type of shares;

c) the type of contributions (cash, contributions in kind, offsetting or conversion of equity);

d) the privileges associated with individual share categories (voting shares, preference shares) and the restriction on the transferability of new registered shares;

e) Information concerning non-cash contributions, stating the name of the contributors, acquisitions in kind, stating the acquisition price, acceptance of shares or other benefits in lieu of payment, stating the number of shares, as well as precise information concerning any kind of founder's benefits.

2) The Office of Justice also verifies that the public document states that:

a) all shares are validly subscribed;

b) the pledged deposits correspond to the total issue amount;

c) the contributions have been made in accordance with the requirements of the law, the Articles of Association or the resolution of the General Meeting;

d) have submitted the supporting documents, which must be individually named, to the General Meeting.

Art. 60

*Authorized capital increase; authorization*

1) Together with the registration of the General Meeting resolution on an authorized capital increase (Art. 295a PGR), the public deed on the authorizing resolution and a certified copy of the Articles of Association must be submitted to the Office of Justice.

2) The Office of the Judiciary shall verify that the statutes amended by the General Assembly contain the following information:

a) the nominal amount or the arithmetical value (in the case of quota shares) of the authorized capital, which may not exceed half of the previous share capital;

- b) the amount of the deposits to be made, at least the statutory minimum;
- c) the par value or quota and the type of shares;
- d) the privileges associated with individual share categories (voting shares, preference shares) and the restriction on the transferability of new registered shares;
- e) in the case of special benefits, the content and value of the benefit granted and the names of the beneficiaries;
- f) the restriction or cancellation of subscription rights and the allocation of subscription rights not exercised or withdrawn.

Art. 61

*Increase resolutions of the Board of Directors*

For each increase resolution of the Board, the Office of Justice shall verify that it includes the following information:

- a) the nominal amount or the arithmetical value (in the case of quota shares) by which the share capital is to be increased;
- b) the number of new shares;
- c) the type of contributions (cash, contributions in kind or offsetting);
- d) Information concerning non-cash contributions, stating the name of the contributors, acquisitions in kind, stating the acquisition price, acceptance of shares or other benefits in lieu of payment, stating the number of shares, as well as precise information concerning any kind of founder's benefits.

Art. 62

*Findings of the Board of Directors; amendments to the Articles of Association and supporting documents*

1) The documents referred to in Art. 58, para. 1, shall be submitted to the Office of Justice together with the notification of the decision of the Board of Directors. In addition, the following must be submitted:

- a) the increase resolution of the Board of Directors;
- b) the publicly certified declaratory resolution of the Board of Directors.

2) The Office of Justice shall verify whether the public document on the findings of the Board of Directors and the amendment to the Articles of Association contains, in addition to the information required by Art. 59 para. 2, the resolution of the Board of Directors on the reduction of the nominal amount of the authorized capital or the deletion of the provisions on the authorized capital increase.

3) The Office of Justice shall register the capital increase if it is fully notified within the time limit set by the authorizing resolution, but within five years at the latest, and if the resolutions of the Board of Directors are covered by the resolution of the General Meeting of Shareholders.

Art. 63

*Conditional capital increase; statutory basis*

- 1) Together with the registration of a conditional capital increase (Art. 297a PGR), the public deed on the granting resolution and a certified copy of the amended articles of association must be submitted to the Office of Justice.
- 2) The Office of the Judiciary shall verify that the statutes amended by the General Assembly contain the following information:
  - a) the nominal amount or the notional value of the conditional capital increase, which may not exceed half of the existing share capital;
  - b) the number, par value or quota and type of shares;
  - c) the group of persons entitled to conversion or option rights;
  - d) the cancellation of the subscription rights of existing shareholders;
  - e) the privileges of individual share categories;
  - f) the restriction on the transferability of new registered shares.

HRV

Art. 64

*Findings of the Board of Directors and amendments to the Articles of Association*

- 1) The following supporting documents must be submitted to the Office of Justice with the notification of the respective declaratory and statutory amendment resolutions by the Board of Directors:
  - a) the expert's confirmation of examination;
  - b) the public document on the resolutions of the Board of Directors;
  - c) a certified copy of the amended Articles of Association.
- 2) The Office of the Judiciary shall verify that the public document on the determination of the Board of Directors and the amendments to the Articles of Association contain the following information:
  - a) the number, par value or quota and type of newly issued shares and, if any, on the privileges attached to individual classes of shares;
  - b) the amount of the share capital at the end of the financial year or at the time of

of the test;

c) the resolutions of the Board of Directors on amendments to the Articles of Association concerning the amount of the share capital and its payment and the amount or quota of the remaining conditional capital;

d) the determination by the certifying officer that the audit certificate contains the required information.

3) The Office of Justice rejects the application if the privileges or the restrictions on the transferability of the new shares are not provided for in the resolution of the General Meeting of Shareholders.

Art. 65

*Repeal of the provisions of the Articles of Association*

1) The following supporting documents must be submitted to the Office of Judicial Affairs with the notification of repeal of the provisions of the statute:

a) the public document on the decision of the Board of Directors;

b) the report of the expert;

c) a certified copy of the amended Articles of Association.

2) The Office of Justice verifies that the public document contains the following information:

a) the resolution of the Board of Directors on the repeal of the provisions of the Articles of Incorporation;

b) the determination by the certifying officer that the expert's report contains the requested information.

Art. 66

*Subsequent liberation*

1) The following documents must be submitted to the Office of Justice with the notification of a subsequent full or partial liberalization of the share capital (Art. 331 para. 3 PGR):

a) the public document on the resolutions of the Board of Directors amending the Articles of Association and its findings;

b) a certified copy of the Articles of Association;

c) in the case of cash deposits, a certificate stating the bank at which the deposits are held;

d) in the case of payment by contribution in kind or offsetting, a report of the Board of Directors signed by a member of the Board of Directors, as necessary,

the unqualified expert report and the contribution-in-kind agreements with enclosures;

e) the annual financial statements or the interim financial statements if the capital has been paid up from freely disposable equity or a confirmation from the auditors;

f) the declaration of the management that no contributions in kind, acquisitions in kind or offsets have been made and no founder's advantages or other special advantages have been granted, or that no other contributions in kind, acquisitions in kind or offsets have been made or no other founder's advantages or other advantages have been granted other than those mentioned in the Articles of Association.

HRV

2) The Office of Justice verifies that the public document contains the following information:

a) the resolution of the Board of Directors on the amendment of the Articles of Association concerning the amount of the contributions made and, if applicable, the provisions on contributions in kind and transfers in kind;

b) the determination that the additional contributions have been made in accordance with the requirements of the law, the Articles of Association or the resolution of the Board of Directors;

c) the citation of the individual supporting documents with enclosures and the certification by the certifying person that they have been submitted to the Board of Directors.

#### Art. 67

##### *Reduction of the share capital*

1) For the registration of the reduction of the share capital, the special audit report must be submitted to the Office of Justice in addition to the documents required for a revision of the articles of association (Art. 355 para. 3 PGR).

2) The certificate of the company that the time limit set for the creditors to file their claims has expired and that they have been satisfied or secured must be submitted to the Office of Justice (Art. 355 para. 5 PGR).

3) This certification may be omitted if the reduction of the share capital is made to eliminate an underbalance caused by losses (Art. 355a PGR).

4) If shares have been repurchased and cancelled, the capital reduction procedure must be complied with and the reduction of the capital and the number of shares must be registered even if a corresponding amount is placed on the liabilities side of the balance sheet.

#### Art. 68

*Participation capital*

- 1) Unless otherwise provided by law, the provisions of Articles 58 to 67 on share capital shall also apply to participation capital.
- 2) If participation capital is already created on the occasion of the incorporation, the provisions of Art. 56 and 57 on share capital and supporting documents shall apply *mutatis mutandis* to participation capital.

*Fusion*

Art. 69

*a) through takeover*

- 1) At least one month prior to the general meeting which is to decide on the approval, the merger plan shall be submitted by each company to the Office of Justice.
- 2) With the exception of the cases mentioned in Art. 351n and 351o PGR, the following supporting documents must be submitted to the Office of Justice together with the notification of dissolution by merger (Art. 351g para. 1 PGR), either in the original or as a certified copy:
  - a) the merger report pursuant to Art. 351b PGR;
  - b) the merger plan with audit report pursuant to Art. 351c PGR;
  - c) the merger balance sheet (closing balance sheet);
  - d) the public deed on the merger resolutions of the General Assembly.
- 3) The Office of Justice shall reject the application if the balance sheet has been drawn up as of a date more than eight months before the application.
- 4) Together with the notification of the takeover by merger (Art. 351g para. 3 PGR), the following documents must be submitted to the Office of Justice as originals or certified copies:
  - a) the merger report pursuant to Art. 351b PGR;
  - b) the public deed of merger and amendment of the Articles of Association, or if no amendment of the Articles of Association is required, the merger resolution of the General Meeting of Shareholders, if the approval of the General Meeting of Shareholders is required.
- 5) If the acquiring company increases its share capital in the course of the merger, the documents required for the capital increase must also be submitted to the Office of Justice (Art. 58).
- 6) The transferring legal entity shall be deleted *ex officio* upon entry of the merger in the commercial register (Art. 351h para. 3 PGR).

Art. 70

*b) by unification*

1) Together with the registration of the newly established joint stock company, which has been established by way of merger by association (Art. 352 PGR), the following documents must be submitted to the Office of Justice in the original or certified copy:

a) the publicly certified act of incorporation;

b) a certified copy of the Articles of Association signed by the administrations of the merging companies;

c) the merger reports pursuant to Art. 351b PGR;

d) the merger plans with audit report according to Art. 351c PGR;

e) the merger balance sheets (closing balance sheets) of the merging companies;

f) public deeds on the merger resolutions of the general meetings of the merging companies with the approval of the act of formation and the articles of association of the merged company;

g) the declaration of the elected members of the administration that the election is accepted, unless this is stated in the act of establishment or in the application;

g) the auditor's statement that the election is accepted, or the statement that the audit review is waived in accordance with

Art. 1058a PGR is waived, unless this is clear from the act of establishment;

h) the declaration of the administrations of the merging companies that no contributions in kind, acquisitions in kind or offsets have been made and no founder's advantages or other special advantages have been granted, or that no other contributions in kind, acquisitions in kind or offsets have been made or no founder's advantages or other advantages have been granted other than those mentioned in the statutes.

2) The examination of the supporting documents by the Office of Justice shall be carried out analogously as in the case of the formation of the company by contribution in kind (Art. 55, para. 2) and merger by acquisition (Art. 69).

4a. European Company (Societas Europaea; SE)

Art. 70a

*Establishment and registration*

1) When registering a European Company (Societas Europaea; SE), the following supporting documents must be submitted to the Office of Justice:

- a) in the case of incorporation by merger: the merger plan and, for the foreign company involved, a certificate of legality issued by the competent authority;
- b) in the case of the establishment of a holding SE: the establishment plan;
- c) in the case of conversion: the conversion plan.

1a) The application under para. 1 shall also be accompanied by:

- a) the agreement on the involvement of employees pursuant to Art. 22 et seq. SEBG;
- b) the resolution on the termination or non-opening of negotiations pursuant to Art. 15 para. 1 SEBG; or
- c) a declaration by all members of the management or administrative body that the period pursuant to Art. 20 para. 3 SEBG has expired without an agreement having been reached.

2) In all other respects, the provisions of Art. 55 et seq. on stock corporations shall apply *mutatis mutandis*.

#### 5. Limited liability company Art. 71

##### *Evidence at the foundation*

1) When registering a limited liability company, the following supporting documents must be submitted to the Office of Justice (Art. 390 PGR):

- a) the publicly certified act of incorporation;
- b) a certified copy of the Articles of Incorporation signed by all founders;
- c) the bank certificate on the payment of the share capital (Art. 391 par. 5 PGR);
- d) the declaration of the founders that no contributions in kind, acquisitions in kind or settlements have been made and no founder's advantages or other special benefits have been granted, or that no other contributions in kind, acquisitions in kind or settlements have been made or no founder's advantages or other benefits have been granted other than those mentioned in the articles of association (Art. 392 para. 2 PGR);
- e) the declaration of the elected directors that the election is accepted, unless this is stated in the act of incorporation or in the application;



f) the declaration of the auditors that the election is accepted or the declaration that the review pursuant to Art. 1058a PGR is waived, unless this is stated in the deed of incorporation.

2) In the case of formation with contributions in kind, acquisitions in kind, offsetting items or special benefits, the contribution in kind agreements and, if available, the acquisition in kind agreements with enclosures must also be submitted with the registration.

*Foundation in simplified procedure*

Art. 71a

*a) Receipts*

When registering a limited liability company under the simplified procedure (Art. 390, para. 5 PGR), the following documents must be submitted to the Office of Justice:

- a) the model memorandum of association signed by all shareholders, whose signatures must be notarized;
- b) the bank certificate on the payment of the share capital (Art. 391 par. 5 PGR);
- c) the declaration of the elected director that the election is accepted, unless this is stated in the act of incorporation or in the application;
- d) if applicable, the auditors' statement that the election is accepted.

Art. 71b

*b) Sample protocol*

1) For the establishment of a limited liability company in the simplified procedure (Art. 390 para. 5 PGR), the model protocol provided by the Office of Justice shall be used.

2) The sample protocol consists of:

- a) the act of incorporation including the appointment of the managing directors and the auditors or the declaration that the review pursuant to Art. 1058a PGR is waived; and
- b) the Articles of Association, which must have the following content:
  - 1. the company name and registered office;
  - 2. the object of the company;

3. the amount of the share capital;
  4. the amount of the capital contribution to be made by each participant to the share capital;
  5. the manner in which notices to shareholders are made.
- 3) The model protocol referred to in paragraph 1 may be obtained from the Office of Justice in paper or electronic form.

Art. 72

*Checking the establishment*

1) The Office of Justice checks whether the requirements for establishing a limited liability company have been met, in particular whether the publicly certified act of establishment contains the following information:

- a) the founders and, if applicable, their representatives;
- b) the declaration to establish a limited liability company;
- c) confirmation that the statutes are established;
- d) the declaration of each founder regarding the assumption of his share capital, specifying the nominal value or quota and the issue amount of the share capital, as well as his unconditional obligation to make a contribution corresponding to the issue amount;
- e) the appointment of the managing directors, the representative and, if applicable, the auditors or the waiver of the review pursuant to Art. 1058a PGR;
- f) the way of exercising the representation;
- g) the statement of the founders that:
  1. all capital contributions have been taken over;
  2. the pledged deposits correspond to the total issue amount;
  3. the legal and statutory requirements for the payment of the contribution have been met;
- h) Retrieved
- (i) the citation of each of the supporting documents and the certification by the certifying officer that they were before the incorporators;
- k) the signature of all founders or their representatives.

2) The Office of Justice examines whether the conditions for establishing a limited liability company in the simplified procedure (Art. 390 para. 5 PGR) are met.

are fulfilled, in particular, whether the model protocol has the content specified in Art. 71b Para. 2 and no provisions deviating from the law have been made.

Art. 73

*Capital increase; supporting documents*

The following supporting documents must be submitted to the Office of Justice together with the notification of the capital increase (Art. 420 PGR):

- a) the public document on the resolution of the shareholders' meeting and amendment of the Articles of Association;
- b) a certified copy of the amended Articles of Association;
- c) the annual financial statements or the interim financial statements if the capital has been paid up from freely disposable equity;
- d) the contribution-in-kind agreements and, if available, the acquisition-in-kind agreements with enclosures;
- e) a certificate showing the bank where the deposits are held;
- f) the declaration of the managing directors that no contributions in kind, acquisitions in kind or offsets have been made and no founder's advantages or other special advantages have been granted, or that no other contributions in kind, acquisitions in kind or offsets have been made or no other founder's advantages or other advantages have been granted other than those mentioned in the articles of incorporation.

Art. 74

*Public certificate; examination*

1) The Office of Justice shall verify whether the public document on the resolution of the general meeting of shareholders contains the following information:

- a) the total nominal amount by which the share capital is to be increased and the amount of the contributions to be made thereon, at least the statutory minimum and the issue amount;
- b) the amount by which, if any, the individual capital contributions are to be increased;
- c) if third parties take over a share, the nominal value or the quota of the new ordinary share;
- d) the type of contributions (cash, contributions in kind, offsetting or conversion of equity);

e) Information concerning non-cash contributions, stating the name of the contributors, acquisitions in kind, stating the acquisition price, as well as precise information concerning any kind of founder's benefits.

2) Then the Office of Justice also checks whether the public deed states that:

a) the amount of the increase is transferred to the capital contributions or the new capital contributions;

b) the pledged deposits correspond to the total issue amount;

c) the contributions have been made in accordance with the requirements of the law, the Articles of Association or the Company's resolution;

d) the supporting documents, which must be listed individually, have been submitted to the shareholders' meeting.

Art. 75

Repealed

Art. 76

*Reduction of the share capital*

1) The provisions on the reduction of the share capital of joint-stock companies shall apply mutatis mutandis to the registration of the reduction of the share capital.

2) The Office of Justice shall verify that the amount of the individual capital contributions is not brought below the minimum amounts required for incorporation, if any.

3) If the amount of the individual capital contributions falls below the minimum amounts required for formation, the last balance sheet, or an interim balance sheet if the balance sheet was prepared more than six months previously, must be used to prove that the capital contribution has decreased as a result of the loss.

6. Cooperative Art. 77

*Evidence at the foundation*

1) The following supporting documents must be submitted to the Office of Justice with the application of a cooperative for new registration (Art. 432 PGR):

a) the minutes of the constituent General Assembly;

b) a copy of the Articles of Association signed by the Chairman and the Secretary of the Constituent General Meeting or by all the founders;

c) if the articles of association oblige the members of the cooperative to assume personal liability or to make additional contributions, the register of members of the cooperative (Art.

461 et seq. and Art. 468 et seq. PGR);

d) insofar as the cooperative must have an auditing body (Art. 477 para. 1 PGR), the declaration of the same that the election is accepted, insofar as this is not evident from the deed of incorporation, otherwise

the statement that the review pursuant to Art. 1058a PGR is waived;

e) the declaration of the founders that no contributions in kind, acquisitions in kind or settlements have been made and no founder's advantages or other special benefits have been granted, or that no other contributions in kind, acquisitions in kind or settlements have been made or no other founder's advantages or other benefits have been granted other than those mentioned in the articles of association and the report of the founders (Art. 434 para. 2 PGR).

2) In the case of formation with contributions in kind, acquisitions in kind, offsetting or special benefits, the contribution in kind agreements and, if available, the acquisition in kind agreements with enclosures and the report of the founders must also be submitted with the registration (Art. 434 para. 2 PGR).

#### Art. 78

##### *Checking the establishment*

The Office of Justice checks whether the requirements for establishing a cooperative society have been met, in particular whether the minutes of the constituent general meeting contain the following information:

- a) the founders and, if applicable, their representatives;
- b) the declaration to establish a cooperative;
- c) confirmation that the statutes are established;
- d) the appointment of the members of the management and the auditors or the waiver of the review pursuant to Art. 1058a PGR;
- e) the way of exercising the representation;
- f) the signature of the chairperson and the keeper of the minutes or of all founders.

##### *Register of Cooperatives*

#### Art. 79

##### *a) In general*

1) The Office of the Judiciary shall, for each cooperative with personal liability or members' liability to make additional contributions, with the exception of citizens' cooperatives in the

As defined by the Law on Citizen Cooperatives,

to draw up a list of members on the basis of the list to be submitted to it (Art. 468 para. 1 PGR) and to update it on the basis of the changes in the membership reported to it.

2) The list must contain the first name and surname, the nationality and the place of residence or registered office or the company name and registered office of the members of the cooperative and refer to the submitted lists and supplements. A majority of persons may only be grouped together if they are general or limited partnerships or associations.

3) If a foreign cooperative establishes and registers a branch in Liechtenstein, a list of members of the cooperative must be kept on the basis of the notification of the foreign register office and the persons obliged to register, unless special circumstances justify an exception.

4) The provisions on the list of members of cooperatives shall apply *mutatis mutandis* to other corresponding lists of members of associations subject to registration, where the members' liability and obligation to make additional contributions are indicated in the same way as for cooperatives, unless the Office of Justice exempts the members from registration.

### Art. 80

#### *b) Directories; supplements*

1) The lists and supplements of the personally liable members of the cooperative shall be signed by a member of the administration.

2) At the beginning of each year, the Office of Justice shall inform the administration of those cooperatives that have not reported any change in the number of members in the previous year of the duty and responsibility incumbent upon them under the law (Art. 468, para. 1 PGR).

3) The submitted documents shall be marked with the date of receipt and shall be kept with the files of the Cooperative.

4) There is no publication of the registers and their supplements. No annotation is made in the main register.

### Art. 81

#### *c) Merger (amalgamation) and transformation*

In case of merger (amalgamation) and conversion of cooperatives, if the same liability or obligation to make additional contributions continues, the lists kept so far may be kept separately.

6a. European Cooperative Society (Societas Cooperativa Europaea;  
SCE) Art. 81a.

*Establishment and registration*

1) When registering a European Cooperative Society (Societas Cooperativa Europaea; SCE), the following supporting documents must be submitted to the Office of Justice:

a) in case of formation by merger: the merger plan and, for the foreign cooperative involved, a certificate of legality issued by the competent authority;

b) in case of conversion: the conversion plan.

2) The application under paragraph 1 must also be accompanied by:

a) the agreement on employee participation pursuant to Art. 22 et seq. SCEBG;

b) the decision to terminate or not to commence negotiations pursuant to Art. 15 par. 1 SCEBG; or

c) a declaration by all members of the management or administrative body that the period pursuant to Art. 20 par. 3 SCEBG has expired without an agreement having been reached.

3) In all other respects, the provisions of Art. 55 et seq. on stock corporations shall apply *mutatis mutandis*.

7. Mutual insurance company and auxiliary fund

Art. 82

*Receipts*

Together with the notification of the establishment of a mutual insurance company (Art. 496 ff. PGR), the following documents must be submitted to the Office of Justice:

a) the certificate of permission to conduct business;

b) the publicly certified articles of association (Art. 497 PGR);

c) the declaration of the elected members of the administration that the election is accepted, unless this is stated in the act of establishment or in the application;

c) the declaration of the auditors that the election is accepted or the declaration that the review pursuant to Art. 1058a PGR is waived, unless this is stated in the deed of incorporation;

d) the documents of appointment of the founding fund together with a declaration

the administration about the extent to which the founding fund is covered by cash or otherwise and is in their possession.

Art. 83

*Registration and announcement*

1) The registration and notice of the association shall contain the following information:

- a) the company name and the registered office of the association;
- b) the classes of insurance to which the operation is to extend;
- c) the amount of the founding fund;
- d) the date on which the permission to conduct business is granted;
- e) the first name and surname, the nationality and the place of residence or registered office or the company name and registered office of the members of the board of directors and, if applicable, of the auditors or the waiver of the audit review pursuant to Art. 1058a PGR.
- f) any special provisions contained in the Articles of Association concerning the duration of the Association and the authority of the members of the administration or the liquidator to represent the Association.

2) In addition, the notice shall contain:

- a) an indication of whether the expenses are to be covered by contributions in advance or on a pay-as-you-go basis and, in the former case, whether with exclusion or with reservation of additional contributions, whether the obligation to pay contributions is limited or not, and whether a reduction of the insurance period or an increase of the insurance premiums is reserved;
- b) Provisions on the form of announcements and indication of the media used for this purpose;
- c) the method of appointment and composition of the management and the auditors.

8. Establishment Art. 84

*Evidence at the foundation*

1) The following supporting documents must be submitted to the Office of Justice with the application of an establishment for new registration (Art. 537 PGR):

- a) the founding act;
- b) a certified copy of the Articles of Incorporation signed by all founders;



- c) the declaration of the founders on the payment of the contributions established by law or by the articles of association into the establishment fund and how the rest is raised or provided (Art. 539 PGR);
  - d) a list of the members of the administration, indicating their first names and surnames, nationality and place of residence or office or company and registered office;
  - e) the declaration of the elected members of the administration that the election is accepted, unless this is stated in the act of establishment or in the application;
  - e) insofar as the establishment must have an auditor (Art. 544 para. 4 PGR), the declaration of the same that the election is accepted, insofar as this is not apparent from the act of establishment, otherwise the declaration that the review pursuant to Art. 1058a PGR is waived;
  - f) the declaration of the founders that no contributions in kind, acquisitions in kind or offsets have been made, or that no contributions in kind, acquisitions in kind or offsets have been made other than those mentioned in the articles of association or the special list (Art. 536 para. 4 PGR).
- 2) In the case of formation with contributions in kind, acquisitions in kind or offsetting acts, a special list of the dedicated assets with enclosures must also be submitted with the registration. The assets must be listed and valued individually in the list.

#### Art. 85

##### *Checking the establishment*

The Office of Justice shall verify whether the requirements for the establishment of an establishment are met, in particular, whether the founding act contains the following information:

- a) the founders and, if applicable, their representatives;
- b) the declaration to establish an institution;
- c) confirmation that the statutes are established;
- d) the appointment of the management and, if applicable, the auditors or the waiver of the review pursuant to Art. 1058a PGR;
- f) the way of exercising the representation;
- g) determination by the founders that the legal and statutory requirements for the payment of the contribution to the Establishment Fund have been met;
- h) the naming of the individual vouchers and the confirmation that they are the founders'

have been present;

i) the signature of all founders or their representatives.

Art. 86

*Capital increase; vouchers; audit*

1) When registering a capital increase, the following documents must be submitted to the Office of Justice:

a) the resolution of the holders of the founder's rights or the supreme body and statute change;

b) a certified copy of the amended Articles of Association;

c) the declaration of the holders of the founder's rights or of the supreme body on the payment of the contributions determined by law or by the articles of association into the establishment fund and how the remainder will be raised or secured, if this is not included in the deed on the resolution on the capital increase (Art. 539 PGR);

d) the declaration of the management that no contributions in kind, acquisitions in kind or offsets have been made, or that no contributions in kind, acquisitions in kind or offsets have been made other than those mentioned in the articles of association or the special list (Art. 536 para. 4 PGR).

2) For the audit of the Office of Justice, the provisions on the audit of the ordinary increase of the share capital of the joint stock company (Art. 59) shall apply *mutatis mutandis*.

Art. 87

*Subsequent liberation*

1) The following documents must be submitted to the Office of Justice with the notification of a subsequent full or partial liberalization of the Establishment Fund (Art. 539 Para. 4 PGR):

a) the resolution of the shareholders' meeting to amend the Articles of Association and their findings;

b) a certified copy of the Articles of Association;

c) in the case of cash deposits, a certificate stating the bank at which the deposits are held;

d) the contribution-in-kind agreements and, if available, the acquisition-in-kind agreements with enclosures;

e) the declaration of the managing directors that no contributions in kind, acquisitions in kind or offsets have been made and that no founder's advantages or other special

advantages have been granted, or that no contributions in kind, acquisitions in kind or offsets have been made, or that no founder's advantages or other advantages have been granted other than those mentioned in the Articles of Association.

2) For the examination of the Office of Justice, the provisions on the examination in the case of subsequent payment of the share capital of the joint stock company (Art. 66) shall apply *mutatis mutandis*.

#### Art. 88

##### *Reduction of the establishment fund*

1) For the registration of the reduction of the Establishment Fund, the provisions on the reduction of the share capital of a stock corporation shall apply *mutatis mutandis* (Art. 67).

2) The Office of Justice shall verify that the amount of deposits to the Establishment Fund is not brought below the minimum amounts required for establishment.

#### 9. Foundation

#### Art. 89

##### *Registration, supporting documents and audit*

1) If a foundation is subject to the statutory registration requirement (Art. 552

§ 14, para. 4 PGR) or if an obligation to register arises due to a change in the purpose of the foundation (Art. 552, § 19, para. 5 PGR), each member of the foundation council, irrespective of his or her power of representation, is obliged to apply for registration of the foundation in the commercial register.

2) When applying for registration of a foundation, the following supporting documents must be submitted to the Office of Justice:

a) the original or a certified copy of the foundation deed, testamentary disposition or inheritance contract;

b) confirmation by the Board of Trustees that the statutory minimum capital is at the free disposal of the Foundation;

c) the organization and representation, stating the surname, first name, date of birth, citizenship and domicile or office or company and registered office of the members of the Board of Trustees as well as the type of subscription.

3) If the registration is made without the existence of a legal obligation to register (Art. 552 § 14 para. 5 PGR), the board of trustees must also confirm that the designation of the company is in conformity with the law.

The founder has not specified the concrete beneficiaries or the group of beneficiaries that can be individualized according to objective characteristics, unless this is evident from the reported purpose of the foundation.

4) The Office of Justice checks whether the legal requirements for the registration of the foundation are met (Art. 986 PGR).

5) Any subsequent amendment to a document in accordance with paragraph 2(a) must be notified to the Office of Justice. Changes that are to be entered directly on the instructions of the judge are reserved.

6) Foundations subject to supervision must notify the auditors for registration. If a foundation is exempt from the obligation to appoint an auditor, this fact must be notified for registration.

#### Art. 90

##### *Registration*

1) The entry about the foundation shall contain the following information:

a) Name or company of the foundation;

b) Seat of the Foundation;

c) Purpose of the Foundation;

d) Date of establishment of the foundation;

e) Duration of the foundation, if limited;

f) Organization and representation, stating the surname, first name, date of birth, citizenship and domicile or registered office or company and registered office of the members of the Board of Trustees as well as the type of subscription;

g) Surname, first name, date of birth, citizenship and domicile or registered office or company and registered office of the auditors, if there is an obligation to appoint an auditor;

h) Surname, first name, date of birth, citizenship and place of residence or office or company and registered office of the representative.

2) If the foundation is exempt from the obligation to appoint an auditor (Art. 552 § 27 para. 5 PGR), this circumstance must also be entered.

#### Art. 91

##### *Unregistered foundations*

1) The Office of Justice shall, at the request of a foundation that is neither subject to a statutory registration requirement nor actually registered (Art. 552 § 14 par. 5

PGR), issues an official confirmation of the filing of such notification after each legally executed notification of formation or amendment. It does not issue an official confirmation if:

- a) the purpose indicated is unlawful or immoral; or
  - b) the notification results in a registration obligation for the foundation.
- 2) The name of a foundation under subsection 1 shall be entered in the company register for the duration of its existence.

Art. 91a

*Information to third parties*

1) With the exception of the information listed in Art. 552 § 20 para. 2 items 1 to 7 and 10 PGR, no information may be disclosed to third parties about foundations not entered in the Commercial Register. The right to access data pursuant to Art. 955b para. 2 no. 2 PGR is reserved.

2) In order to perform its duties, the Office of Justice shall be entitled to electronically record and manage the information disclosed to it on foundations pursuant to para. 1. The disclosure of this information and of deposited documents to other authorities is not permitted, with the exception of the domestic law enforcement authorities, the FIU staff unit, the Financial Market Authority (FMA) and the tax administration.

10. Association

Art. 92

*Evidence at foundation*

1) With the application of an association for new registration, the following documents must be submitted to the Office of Justice (Art. 247 para. 3 PGR):

- a) the minutes of the constituent General Assembly;
- b) a copy of the statutes signed by the chairman, one other member and the secretary of the constituent general assembly or by all founders;
- c) if the Articles of Association oblige the members to assume personal liability or to make additional contributions, the list of members (Art. 461 ff. and Art. 468 ff. PGR);
- d) if applicable, the declaration of the auditors that the election is accepted, if this is not evident from the deed of incorporation, or the declaration that the review pursuant to Art. 1058a PGR is waived.

2) The provisions on the examination for the new registration of the cooperative (Art. 78) shall apply mutatis mutandis to the examination by the Office of Justice.

Art. 93

*Registration*

1) The registration about the association shall contain the following information:

- a) the date of the Articles of Association;
- b) the name and the registered office;
- c) the purpose or subject matter;
- d) at most, the personal liability of the members or the obligation of the members to make additional contributions;
- e) the organization, representation and method of subscription;
- f) if applicable, the waiver of the review pursuant to Art. 1058a PGR.

2) If the articles of association provide for personal liability of the members or if the members are obliged to make additional contributions, the Office of Justice must keep a list of the members in accordance with the provisions on the register of cooperatives (Art. 79 ff.).

11. Other associations and institutions

Art. 94

*Principle*

1) In the case of corporations, the provisions governing joint-stock companies shall apply mutatis mutandis to the registration, the documents to be submitted to the Office of Justice and the examination thereof, unless the law contains other provisions.

2) In the case of establishments (independent assets), the provisions on establishments and foundations shall apply mutatis mutandis to the registration, the documents to be submitted to the Office of Justice and the examination thereof, unless the law contains other provisions.

12. Community

Art. 95

*Receipts*

1) With the application of a community for new registration, the Office shall be provided with

for Justice the following supporting documents (Art. 792 PGR):

- a) the public deed on the establishment of a community (community contract);
- b) the list of individual assets.

2) The community contract shall specify the composition of the community, its main members and the exclusion of the other members of the community from representation.

Art. 96

*Registration; Publication*

1) The entry about the community shall contain the following information:

- a) the name and the seat;
- b) the date of its establishment and the duration of the community;
- c) the name, surname, nationality and place of residence or office of each member of the community;
- d) the indication of whether a property community or a revenue community has been established and the amount of the value of the community assets;
- e) any exclusions from representation, indicating the first name and surname, the nationality and the place of residence or office of the head of the community.

2) The publication is made in accordance with the legal provisions.

13. Non-commercial procuration

Art. 97

*Registration*

1) Anyone who wishes to appoint a proxy for a business that does not require registration (§ 36 SchIT PGR) must apply for registration of the proxy in the Commercial Register.

2) The entry shall contain:

- a) First name and surname, nationality and place of residence or office or company name and registered office of the principal (principal) and the authorized signatory;
- b) if the procuration is to be limited only to the branch office or in some other way, an indication of this.

Art. 98

*Deletion*

The entry of the non-commercial procurator is deleted ex officio:

- a) if bankruptcy proceedings are instituted against the principal's assets; the deletion shall take place as soon as the Office of Justice becomes aware of the institution of bankruptcy proceedings;
- b) after the death of the principal, if one year has passed since then and the heirs cannot be required to cancel;
- c) if the authorized signatory has died and the principal cannot be ordered to cancel the authorization.

14. Trusteeship (Trust)

Art. 99

*Registration*

- 1) Every trust relationship that is established for a period of more than twelve months must be filed for entry in the Commercial Register within twelve months of its establishment if at least one trustee has his domicile or registered office in Germany.
- 2) No entry may be made if a copy or a certified copy of the certificate of justification is deposited with the Office of Justice within a period of twelve months in accordance with the provisions on the deposit of documents. In the case of deposit of documents, a copy or certified copy of each document by which the certificate of substantiation is amended shall also be deposited.
- 3) With the consent of the Office of Justice, an additional entry of the trust relationship in the Commercial Register may be dispensed with if the assets forming the object of the trusteeship and thus the trust relationship are already entered in other public registers (land register, patent register and the like).

Art. 100

*Registration; Content*

- 1) The application for registration in the Commercial Register shall contain the following information:
  - a) the designation of the trust relationship;
  - b) the date of establishment of the trust relationship;
  - c) the duration of the trust relationship;



d) the first name and surname, nationality, date of birth and the residence or office address or company and registered office of the trustee.

2) Any change in a registered fact must also be reported for registration.

Art. 100a

*Information to third parties*

1) With the exception of the fact of the existence of a fiduciary relationship not entered in the commercial register, no information may be disclosed to third parties. The right of access to data pursuant to Art. 955b para. 2 no. 3 PGR is reserved.

2) In order to perform its duties, the Office of Justice is authorized to electronically record and manage the information disclosed to it by fiduciary relationships not entered in the Commercial Register. Disclosure of this information and of deposited documents to other authorities is not permitted, with the exception of the inland

The FIU staff unit, the FMA and the tax administration.

15. Trust enterprise (business trust) Art. 101

*Registration and announcement*

1) The registration and notice of the trust company shall contain the following information:

a) the company (name), the registered office, the duration and the purpose or object of the company;

b) the amount of the trust fund or an indication of the amount of its estimated value, if it is not in money, with a further brief indication of its composition and, if it has not been fully paid, an indication of how the remaining payments are to be fulfilled;

c) the first name, surname, nationality and place of residence or registered office or the company (name) and registered office of the trustees who are to exercise the trustee power;

d) the way of exercising the representation;

e) the form of notices to third parties.

2) The provisions on notice under the general provisions

The provisions of the Swiss Code of Obligations on Association Persons (Art. 231 and 956 et seq. PGR) apply accordingly.

Art. 102

*Registration*

- 1) The application for entry in the Commercial Register as a trust must be made by at least one trustee or a party involved in the establishment. If the Office of Justice sets up the trust enterprise itself, the entry must be made ex officio.
- 2) Any change in the facts and circumstances subject to registration or notification must be registered by the managing trustees or notified to the Office of Justice. In the absence of managing trustees, the Office of Justice may, upon notification by the parties concerned or on its own initiative, proceed in accordance with the provisions governing the commercial register.
- 3) A copy or a certified copy of the articles of association or a certified extract thereof, which reproduces the contents of the articles of association required for registration, must be attached to the application as well as to any amendment pursuant to paragraph 2.

16. Branch office

Art. 103

*Principle*

- 1) Independent branches shall be registered in the Commercial Register at the place where their business premises or management is located, with reference to the registration of the main branch.
- 2) Only branches of trades can be entered in the Commercial Register.

*Branch of a domestic company*

Art. 104

*a) Registration; supporting documents*

- 1) The application for registration must be signed:
  - a) for sole proprietorships, by the proprietor of the company;
  - b) in the case of general and limited partnerships, by all partners authorized to represent them;
  - c) in the case of legal entities, by one member of the management who is an individual signatory or by two members who are authorized to sign collectively.

2) The following must be submitted to the Office of Judicial Affairs as supporting documents:

- a) an extract from the minutes of the competent corporate body containing the resolution on the establishment of the branch, the appointment of its representatives and the manner of their subscription;
- b) the declaration of the registering persons that it is an independent branch of a trade.

Art. 105

*b) Changes*

1) If changes are to be entered, the application must be signed:

- a) for sole proprietorships, by the proprietor of the company;
- b) in the case of general and limited partnerships, by all partners authorized to represent them;
- c) in the case of legal entities, by one individual authorized signatory for the entire company or by two collective authorized signatories for the entire company.

2) Changes to the main branch office that also result in a change in the registration of a branch office must be notified in the same manner.

*Branches of companies with head office in the EEA*

Art. 106

*a) Registration; supporting documents*

1) Branches of companies whose registered office is in the EEA must be entered in the Commercial Register with reference to the registration at the head office (Art. 291a PGR).

2) Art. 104 par. 1 shall apply to the signing of the application.

3) An extract from the commercial register of the head office and a certified copy of the articles of association must be submitted to the Office of Justice.

Art. 107

*b) Changes*

1) Changes in the branch office shall be notified by the head of the branch office, enclosing the necessary supporting documents.

2) On the registration of changes about the main establishment, which at the same time

entail a change in the registration of a branch, Art. 105 par. 1 shall apply.

3) The application must be accompanied by the required supporting documents.

Art. 108

*Branches of companies with head office outside the EEA*

1) The registration of the first branch of a company whose head office is located outside the EEA must correspond in form and content to the registration of a domestic principal place of business, unless foreign law requires a deviation (Art. 291a and Art. 291b PGR).

2) Art. 104 par. 1 shall apply to the signing of the application.

3) An extract from the Commercial Register of the head office, a certified copy of the act of incorporation and, if they are the subject of a separate act, the certified articles of association of the head office must be submitted to the Office of Justice.

4) If no institution corresponding to the Commercial Register exists at the place of the principal place of business, the extract from the Commercial Register shall be replaced by official proof that the company legally exists at the place of the principal place of business in accordance with the regulations applicable there.

5) The provisions of Art. 107 shall apply to the registration of amendments.

Art. 109

*Cancellation of branches*

1) The registration of the deletion of a branch is done in the same way as the registration of changes. In addition, proof must be provided that the business operations have ceased.

2) Branches of foreign companies must also provide proof that creditors in the country have been secured or satisfied.

17. Trade under public law

Art. 110

*Trade under public law*

1) Independent trades under public law shall be registered in the Commercial Register under the name given to them by public decree. In the absence of such a designation, they shall be registered under the designation under which they appear in business transactions.

2) The content of the registration is determined by the legal form of the institution under public law. The provisions governing the corresponding legal forms under private law shall apply *mutatis mutandis*.

3) Where no clear assignment to a legal form under private law is possible, the entry is based on the provisions on cooperatives.

#### 18. European Economic Interest Grouping (EEIG)

##### Art. 111

###### *Evidence at the foundation*

When registering a European Economic Interest Grouping, the following documents must be submitted to the Office of Justice (Art. 4 EEIG Act):

- a) the founding treaty;
- b) the declaration of the elected directors that the election is accepted, unless this is stated in the founding agreement or registration.

##### Art. 112

###### *Registration and announcement*

1) The entry in the Commercial Register and the announcement shall contain the following information:

- a) the name of the association;
  - b) the first name, surname, nationality and place of residence or registered office or the company name, registered office, legal form and the Number and place of registration of members and directors;
  - c) the way of exercising the representation;
  - d) the object of the company in accordance with the articles of incorporation;
  - e) any final court decision concerning the invalidity of the agreement;
  - f) the relocation plan including the planned new seat;
  - g) the limitations of liability for members.
- 2) Any change in a registered fact shall also be filed for registration and publication.
- 3) The Office of Justice shall notify the Office for Official Publications of the European Communities of the publication within one month of its publication in the officially recognized publication media (Art. 6 par.

2 EEIG

ACT).

Art. 113

*Change notification*

1) The application for entry in the commercial register, amendments to the formation agreement and changes in the composition of the grouping with the exception of the withdrawal of a member, the appointment of the managing directors or the liquidation and the termination or amendment of the power of representation must be made by all the members of the grouping, and the entries otherwise required by law must be made by the managing directors or liquidators (Art. 4 (2) EEIG Law).

2) Agreements on the limitation of liability may be notified by the new member, the withdrawal of a member by resolution and the dissolution of the association by resolution of the members by each party for entry in the commercial register (Art. 4 Para. 3 EEIGG).

19. Investment funds and investment undertakings in contract form

Art. 113a

*Receipts*

Together with the application of an investment fund (Art. 5 UCITSG; Art. 7 AIFMG) or an investment undertaking in contractual form (Art. 7 IUG) for new registration, the following documents must be submitted to the Office of Justice:

- a) application, which must contain the information referred to in Art. 113b; and
- b) Confirmation or certificate from the FMA that:
  - 1. the investment fund is authorized (Art. 8 et seq. UCITSG);
  - 2. an authorized AIFM manages the investment fund (Art. 7(8) AIFMG); or
  - 3. an investment undertaking in the form of a contract exists (Art. 17 IUA).

Art. 113b

*Registration*

1) The registration of the investment fund or the investment undertaking in contract form shall contain the following information:

- a) Name of the investment fund or investment company in contract form;
- b) Date of establishment of the investment fund or investment undertaking in contract form;

c) Company name or name and address of the management company or the administrator (AIFM).

2) Any change in a registered fact must also be reported for registration.

20. Collective trusteeship (unit trust)

Art. 113c

*Receipts*

When registering a collective trust (unit trust) (Art. 6 UCITSG; Art. 8 AIFMG; Art. 8 IUG) for new registration, the following documents must be submitted to the Office of Justice:

a) application, which must contain the information referred to in Art. 113d; and

b) Confirmation or certificate from the FMA that:

1. the collective trusteeship (unit trust) has a license (Art. 8 et seq. UCITSG);

2. an authorized AIFM manages the collective trust (unit trust) (Art. 8(6) AIFMG);

or

3. a collective trusteeship (unit trust) exists (Art. 17 IUA).

Art. 113d

*Registration*

1) The registration of the collective trust (unit trust) shall contain the following information:

a) Name of the collective trust (unit trust);

b) Date of establishment of the collective trust (unit trust);

c) Company name or name and address of the management company or AIFM.

2) Any change in a registered fact must also be reported for registration.

21. Investment companies, investment limited partnerships and investment commanditaries

Art. 113e

*Evidence and registration*

1) Investment companies, investment limited partnerships and investment management companies pursuant to Art. 7 UCITSG, Art. 9, 10 and 14 AIFMG and Art.

9, 10 and 14 IUA shall submit the supporting documents required for filing under the provisions of their respective legal forms.

2) Entries of investment companies, investment limited partnerships and investment limited partnerships pursuant to paragraph 1 shall contain, in addition to the information required by the provisions of their respective legal forms, the company name or the name and address of the management company or the AIFM.

F. Official procedures for dissolution and cancellation

*Dissolution and deletion*

Art. 114

*a) in case of loss of lawful condition and public dues owed*

1) The dissolution and liquidation of a legal entity or a trust enterprise ex officio shall take place in the cases provided for by law (Art. 971 para. 1 PGR).

2) If the Office of Justice becomes aware of the fact that the legal provisions regarding administration and representation, or that the legal provisions regarding the appointment of the representative are no longer fulfilled, or that there is a lack of the necessary organs, or that the public dues have not been paid despite repeated requests, the Office of Justice shall request the legal entity by registered letter or official delivery to restore the legal situation or to pay the public dues.

3) If the summons cannot be delivered to the legal entity due to a lack of a delivery address or a lack of organs, the summons shall be published once in the official publication organs.

4) The requested legal entity shall be given a period of at least two months to restore the lawful condition or to pay the public dues.

5) The request may be appealed.

6) If this request is neither complied with nor an objection is lodged within the set period, the Office of Justice shall order the dissolution and liquidation.

Art. 115

*b) in the event of damage to the interests of the country*



- 1) If there is a suspicion that a company is damaging the interests of Liechtenstein or is detrimental to the reputation of the country and is disturbing its relations with other states or international organizations, the Government shall order an investigation.
- 2) The final decision as to whether one of these conditions is met rests with the government.
- 3) For the duration of the administrative proceedings, the Government may apply to the Regional Court for the appointment of a receiver as a means of security within the meaning of the Act on the General Administration of the Land.
- 4) After the final conclusion of the administrative proceedings, the Office of Justice shall, on the instructions of the Government, order, enter and publish the dissolution and liquidation.

Art. 116

*c) in the absence of realizable assets*

- 1) If the Office of Justice becomes aware that a legal entity no longer has any assets that can be liquidated, it shall request the administration by registered letter to notify it in writing within 30 days of its justified interest in maintaining the registration.
- 2) If no interest is expressed within the time limit set or if the administration informs the Office of Justice of the absence of realizable assets, the Office of Justice shall issue a single notice inviting third parties to notify it in writing within 30 days of their justified interest in maintaining the registration of the legal entity.
- 3) If the legal entity no longer has a representative, or if the residential addresses of the members of the administration are unknown, or if there are no longer any liquidators, members of the administration or members of the board of directors, public announcement is sufficient.
- 4) The request may also be made on the mere presumption of the lack of assets.
- 5) If no justified interest in maintaining the registration is asserted in writing within the set period, the Office of Justice shall ex officio cancel the company. Otherwise, it shall refer the matter to the District Court for a decision.

Art. 117

*d) for non-merchant companies, procurators and representatives*

1) If the legal requirements for the cancellation of a non-merchant company, procurator or representative are met (Art. 972 and 973 PGR), the provisions of Art. 114 PGR apply to the ex officio cancellation procedure.

ff. apply mutatis mutandis.

2) The request and announcement may be waived in such cases if the death or deletion has been officially recorded in the commercial register of the legal entity or registered person.

Art. 118

*e) for branches*

1) Branches of companies with their head office abroad are deleted ex officio if it is officially established that their business operations have ceased and the main business located abroad does not comply with the request of the Office of Justice to delete the branch or has itself ceased to exist.

2) The provisions of Art. 116 shall apply mutatis mutandis.

Art. 119

*f) in the other cases*

1) Dissolution, liquidation and cancellation may also be ordered by the judge.

2) In this case, the registration of the dissolution and liquidation or the cancellation shall be made immediately on the basis of the court's decision.

III. Appeal, opposition and objection procedures Art. 120

*Complaint and supervisory appeal*

1) If the suspensive effect of a complaint or supervisory complaint is withdrawn by order of the judge, the public prosecutor's office or the government, the proceedings at the Commercial Register shall be continued and the relevant entries, deletions or other dispo

sitions are to be made that are necessary for the progress of the proceedings.

2) There is no independent appeal against these acts, omissions or other dispositions of the Office of Justice. Objections shall be raised in the appeal proceedings.

Art. 121

*Opposition*

- 1) Subject to paragraph 3, the objection shall have suspensive effect.
- 2) Statutory deadlines or deadlines set by other authorities remain unaffected by the objection.
- 3) The Office of Justice may withdraw the suspensive effect of an objection if an overriding public interest so requires or if the objection has been raised in a manifestly abusive manner.
- 4) The opposition proceedings shall be settled by the decision of the Office of Justice or by withdrawal. In case of withdrawal, the fees shall be reduced to half.
- 5) If the opposition is upheld in whole or in part, no fees may be charged for the opposition proceedings.

*Private law objection*

Art. 122

*a) in general*

- 1) The private law objection must be submitted in writing to the Office of Justice. Transmission by electronic means (fax, e-mail, etc.) is not permitted. Oral or telephone notification shall have no legal effect.
- 2) The objection must contain a request and its justification.
- 3) Objections that do not meet these requirements will not be considered. The objector must be notified in writing of the non-acceptance with a brief statement of reasons, provided that the address of the objector is known.
- 4) The objection procedure is handled exclusively by correspondence. Applications and statements made by telephone will not be considered. The same applies to applications and statements sent electronically.
- 5) A fee shall be charged to the objector for conducting the opposition proceedings. This fee shall be set at the same level as the registration fee for the registration or cancellation against which the objection is directed.

Art. 123

*b) Completed registration; referral to the judge*

- 1) An entry is completed when it is entered in the diary and marked with the corresponding diary number.
- 2) If third parties object to the Office of Justice on the grounds of infringement of their rights

against an executed registration, they shall be referred to the judge.

- 3) The decision to refer an objection to the judge shall be communicated to the objector immediately in writing by registered letter or official delivery.
- 4) With the opening of the decision the objection is settled.
- 5) There is no ordinary appeal against the decision of the Office of Justice to refer an appeal to the judge.

Art. 124

*c) Revision of the executed registration*

- 1) If the opponent appeals against an executed registration on the basis of regulations which must be observed by the Office of Justice ex officio, the Office of Justice shall carry out a revision of the registration or cancellation in question.
- 2) In revision proceedings, the application and all supporting documents of the registration or cancellation in question are re-examined as if the registration or cancellation had not yet taken place.
- 3) The employee of the Office of Justice responsible for the original registration may not be directly or indirectly involved in the audit. He may, however, be questioned as a respondent in the course of the appeal.
- 4) The result of the appeal shall be communicated to the objector in writing without delay and shall be briefly substantiated.
- 5) If the revision carried out shows that the registration or deletion was rightly made by the Office of Justice, applying the rules to be observed ex officio, the objection shall be referred to the judge. Otherwise, the procedure for correction of the registration shall be initiated without delay.
- 6) If the procedure for rectification must be initiated, no fees for the objection procedure may be charged to the objector.

Art. 125

*d) Objection to a registration that has not been executed*

- 1) If a private-law objection is raised against a registration that has not yet been executed, the registration procedure shall be suspended.
- 2) The opponent must immediately be given a period of at least 10 days, sufficient under procedural law, to obtain from the judge an order prohibiting the registration or cancellation. The time limit set is not

extendable.

- 3) At the same time, the party appealed against shall be notified in writing.
- 4) A request for inspection of records shall only be granted if the objector can credibly demonstrate that inspection of records is an indispensable prerequisite for the submission to the court.
- 5) The objection is settled by the expiry of the set time limit, the judge's order or by withdrawal. In case of withdrawal, the fees shall be reduced to half.
- 6) Upon settlement of the opposition, the registration procedure shall be continued. IIIa. Procedure in the event of a waiver of a review

Art. 125a

*Waiver of a review (review)*

1) Companies that waive the review pursuant to Art. 1058a PGR must submit to the Office of Justice, together with the application for registration of the waiver, a declaration signed by at least one member of the administration or management that:

- a) the purpose of the company is exclusively directed to the operation of a business conducted in a commercial manner;
- b) it is a micro corporation within the meaning of Art. 1064 para. 1a PGR;
- c) the supreme body has unanimously waived a review.

2) The application for registration of the waiver of the review must also be submitted to the Office of Justice:

- a) the minutes or a corresponding excerpt from the minutes of the supreme body that decided on the waiver, bearing the original signature of the chairperson and recording secretary; or
- b) the corresponding circular resolution or the individual waivers in the original.

3) The declaration pursuant to para. 1 may already be made by the founders on the occasion of the formation and may be included in the deed of formation.

IV. Matrimonial property law

Art. 126

*Principle*

- 1) The Office of Justice keeps the register of property rights, namely the main register and, if necessary, a register of persons, and keeps the register files.
- 2) Only entries relating to a single married couple may be included on each page or card of the principal register.

Art. 127

*Directory of persons; inspection*

- 1) The register of persons shall contain the names of all spouses entered in the main register in alphabetical order.
- 2) Only the parties involved (each spouse and each heir) are entitled to inspect the documents.
- 3) Inspection of the main register shall be allowed to anyone who can prove an interest.

Art. 128

*Spouses; owners of sole proprietorships, general partners and partners with unlimited liability*

- 1) If a spouse is entered in the register of matrimonial property rights and at the same time as the owner of a sole proprietorship, as a general partner or as a partner with unlimited liability in a limited partnership, limited partnership share, limited partnership share or limited partnership ordinary partnership in the commercial register, the necessary references must be included as annotations in the register of matrimonial property rights and in the register of companies.
- 2) If the owners of sole proprietorships, general partners or partners with unlimited liability are applied for entry in the commercial register in accordance with para. 1, it must be ascertained before the entry whether entries of property rights relationships relating to these persons are contained in the property rights register.

Art. 129

*Registration*

- 1) Notification of property relations and legal transactions between spouses for registration and publication shall be made in writing.
- 2) The application for registration in the Commercial Register, the annotation and the publication shall contain (Sec. 51 (6) SchIT PGR):
  - a) the date of the contract;

- b) the first name, surname, nationality, date of birth, civil status and residential address of the spouses;
  - c) the note and the date of registration.
- 3) The written form may be established by the applicant's signature on a printed form at the Office of Justice, but the Office of Justice must verify the identity of the person before accepting the application.

Art. 130

*Testing*

- 1) Prior to registration in the main register, the Office of Justice shall conduct an examination of the application with respect to:
- a) the registrability of the registered facts, whereby contradictory and unclear marriage contracts are also deemed not to be registrable;
  - b) the competence of the registering office or the authorization of the registering person, whereby the authorization of notary publics to make the registration may be included in the marriage contract or in the legal transaction itself;
  - c) the identification documents to be presented.
- 2) If the examination reveals that the application does not meet these requirements, the entry in the main register shall be refused by the Office of Justice and the application shall be rejected.
- 3) The applicant must be informed of the reasons for the rejection in writing and with the remark that the rejection will become final if no appeal is filed within the time limit.

Art. 131

*Modification and deletion*

- 1) The provisions on new registration apply mutatis mutandis to changes and deletions.
- 2) The provisions on changes and deletions ex officio for sole proprietorships apply mutatis mutandis to changes and deletions ex officio (Art. 970 para. 1 PGR).

V. Transitional and final provisions

Art. 132

*Correction of old, defective entries*

- 1) If the Office of Justice becomes aware of a registration that does not comply with the new provisions of the law and the ordinance, either through the perception of its employees or through notification of third parties, the defective registration shall be corrected ex officio and without notification of the company or person concerned, provided that the correction does not require a material change.
- 2) The correction shall be made no later than when the entry is transferred to an electronically maintained register.
- 3) If a material change is required to correct the registration, the cooperation of the company or person concerned is required.

Art. 133

*Entry into force*

This Ordinance shall enter into force simultaneously with the Act of 20 December 2002 on the Amendment of the Law on Persons and Companies.



## **IX. Consumer Credit Act**

from 24 November 2011

### **I. General provisions Art. 1**

#### *Subject and purpose*

1) This law regulates the rights and obligations of consumers, lenders and credit intermediaries in connection with credit agreements and aims to protect consumers and ensure a transparent and efficient consumer credit market.

2) It transposes Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (EEA Corp.: Annex XIX 7h.07).

#### **Art. 2**

##### *Scope*

1) This law applies to credit agreements.

2) It does not apply to:

a) Credit agreements that are secured either by a mortgage or by a loan granted in a member state of the European Economic Area (EEA member state).

The assets are secured by collateral or a right to immovable property that is otherwise customary and comparable for immovable assets in the member state of the European Union or in Switzerland;

b) Credit agreements intended for the acquisition or maintenance of title to land or an existing or proposed building;

c) Credit agreements where the total credit amount is less than 300 francs or more than 120,000 francs;

d) Rental or lease agreements in which neither the agreement itself nor a separate agreement provides for an obligation to purchase the rental or lease asset; such an obligation is to be assumed if the lender decides on it unilaterally;

e) Credit agreements in the form of overdraft facilities, where the loan must be repaid within one month;

f) Interest-free and fee-free credit agreements and credit agreements under which the credit

repayable within three months and for which only minor costs are incurred;

g) Contracts for loans granted to employees by the employer as a fringe benefit free of interest or at a lower effective annual interest rate than the market rate and which are not offered to the general public;

h) Credit agreements concluded with an investment firm or with a bank as defined in the Banking Act, the purpose of which is to allow an investor to enter into a transaction involving one or more of the financial instruments listed in Annex 2, Section C of the Banking Act, if the investment firm or the bank granting the credit is a party to the transaction;

i) Credit agreements that are the result of a settlement before a judge or other legally authorized body;

k) Credit agreements that have as their object the gratuitous deferral of an existing receivable;

l) Credit agreements under which the consumer is obliged to provide the lender with a vehicle pledge as security and where the consumer's liability is limited exclusively to this vehicle pledge;

m) Credit agreements relating to loans granted to a limited number of customers under statutory provisions in the public interest, whether at a lower than the market interest rate or interest-free or on terms that are more favorable to the consumer than the market interest rate and at interest rates that do not exceed the market interest rate.

3) Credit agreements in the form of a short-term overdraft facility, where the credit is to be repaid on demand or within three months, are subject only to Articles 1 to 3, 4 par. 1 letters a to c and par. 3, Articles 6 to 9, 10 par.

1 and 4, Art. 11, 13, 16 and 18 and Art. 20 to 30 apply.

4) Only Articles 1 to 3, 19 and 22 to 30 apply to credit agreements in the form of overruns.

5) Only Articles 1 to 4, 6, 7, 9, 10 (1), (2) (a) to (i), (m) and (s) shall apply to credit agreements which provide that the creditor and the consumer agree on deferment or repayment terms if the consumer has not fulfilled his obligations under the original credit agreement.

and par. 4, art. 12, 14, 17 and 19 to 30 apply, provided that:

a) by such agreements is likely to result in legal proceedings for

Failure to meet payment obligations can be avoided; and

b) the consumer is not thereby placed in a worse position compared to the original credit agreement.

6) If the cases referred to in paragraph 5 are credit agreements in the form of a short-term overdraft facility, only the provisions of paragraph 3 shall apply.

### Art. 3

#### *Definitions and designations*

1) For the purposes of this Act shall be deemed to include:

a) "Consumer" means a natural person who enters into a credit agreement for a purpose that is not attributable to his or her professional or commercial activity;

b) "creditor" means a natural or legal person who grants or promises to grant credit in the course of his or her commercial or professional activities;

c) "credit agreement" (consumer credit agreement) means an agreement under which a creditor extends credit to a consumer in the form of a deferred payment, loan, or other similar financing

The consumer shall not grant or promise to grant assistance, with the exception of contracts for the recurring provision of services or for the supply of goods of the same kind, where the consumer makes partial payments for these services or goods for the duration of the provision or supply;

d) "Overdraft facility" means an express credit agreement under which the creditor provides the consumer with amounts in excess of the current balance in the consumer's current account; if this credit is to be repaid upon demand or within three months, it is a "short-term overdraft facility."

e) "Overdraft" means a tacitly accepted overdraft in which the creditor provides the consumer with amounts that exceed the current balance on the consumer's current account or the agreed overdraft facility;

f) "Credit intermediary" means a natural or legal person, other than a credit grantor, who, in the course of his or her trade, business or profession, acts for a consideration, which may consist of a monetary payment or other agreed economic benefit:

1. Introduces or offers credit agreements to consumers;
  2. assists consumers with preparatory work for the conclusion of credit agreements other than that referred to in Clause 1; or
  3. concludes credit agreements with consumers on behalf of the lender;
- g) "Total cost of the credit to the consumer" means all costs, including interest, commissions, taxes and costs of any kind except notarization fees - which the consumer has to pay in connection with the credit agreement and which are known to the creditor; costs for ancillary services in connection with the credit agreement, in particular insurance premiums, are also included if the conclusion of the agreement on such ancillary service is an additional mandatory condition for the credit to be granted at all or under the intended contractual terms;
- h) "Total amount payable by the consumer" means the sum of the total amount of credit and the total cost of credit to the consumer;
- i) "Annual percentage rate of charge" means the total cost of the loan to the consumer, expressed as an annual percentage of the total loan amount-  
are expressed, as far as applicable, including the costs according to Art. 20 par. 2 and 3;
- k) "Debit Interest Rate" means the interest rate, expressed as a fixed or variable periodic percentage, applied on an annual basis to the Loan Disbursement Amounts drawn;
- l) "fixed borrowing rate" means a borrowing rate for which the creditor and the consumer agree in the credit agreement on a single borrowing rate for the entire term of the credit agreement or on several borrowing rates for different partial periods of the total term, based exclusively on a certain fixed percentage rate. If not all borrowing rates are stipulated in the credit agreement, the borrowing rate shall be deemed to be agreed only for those partial periods of the total term for which the borrowing rates have been determined exclusively by a certain fixed percentage agreed upon conclusion of the credit agreement;
- m) "Total Credit Amount" means the limit or sum of all amounts made available under a Credit Agreement;
- n) "durable medium" means any medium which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;
- o) "linked credit agreement" means a credit agreement under which:

1. the credit in question serves exclusively to finance a contract for the supply of specific goods or the provision of a specific service; and
  2. these two agreements objectively form an economic unit; an economic unit is to be assumed if the supplier of goods or the provider of services finances the credit for the benefit of the consumer or if, in the case of financing by a third party, the creditor avails himself of the cooperation of the supplier of goods or the provider of services in the preparation or conclusion of the credit agreement or if the credit agreement expressly specifies the specific goods or the provision of a specific service.
- 2) The designations of persons, functions and professions used in this Act shall be understood as referring to persons of the male and female genders.

## II. Information and pre-contractual obligations Art. 4

### *Standard information to be included in advertising*

- 1) If interest rates or other figures related to the cost of credit to the consumer are mentioned in advertisements for credit agreements, such information in the advertisement must contain the following elements in a clear, concise and conspicuous manner using a representative example:
  - a) fixed or variable borrowing rate or fixed and variable borrowing rate, together with details of all costs incurred by the consumer and included in the total cost of credit;
  - b) Total credit amount;
  - c) Annual percentage rate of charge; except for credit agreements in the form of a short-term overdraft facility;
  - d) if applicable, term of the credit agreement;
  - e) in the case of credit in the form of deferred payment for a specific good or service, cash payment price and amount of any down payments; and
  - f) total amount to be paid by the consumer, if any, and the amount of partial payments.
- 2) Is the conclusion of a contract for the use of an ancillary service,

If, in connection with the credit agreement, the conclusion of an insurance contract, in particular, is a mandatory prerequisite for granting the credit at all or according to the contractual terms and conditions provided for, and if the costs of the ancillary service cannot be determined in advance, the obligation to conclude such contract shall also be indicated in a clear and concise manner in a visually prominent place together with the annual percentage rate of charge.

3) The provisions of the Unfair Competition Act remain reserved.

*Pre-contractual information*

Art. 5

*a) In general*

1) The creditor or, where applicable, the credit intermediary shall, in good time before the consumer is bound by a credit agreement or offer and on the basis of the credit terms and conditions offered by the creditor and, where applicable, the preferences expressed and information provided by the consumer, provide the consumer with the information he needs to compare different offers and make an informed decision as to whether to conclude a credit agreement. The creditor or, where applicable, the credit intermediary shall provide the consumer with the information referred to in paragraph 2 on paper or another durable medium using the form "Standard information for consumer credit" as set out in Annex 2. The creditor's information obligations shall be deemed to have been fulfilled if he has submitted the said form.

2) The information referred to in paragraph 1 must include the following:

- a) the type of credit;
- b) the identity and address of the creditor and, if applicable, the identity and address of the credit intermediary involved;
- c) the total amount of credit and the conditions of drawdown;
- d) the term of the credit agreement;
- e) in the case of credit in the form of deferred payment for a specific good or service and, in the case of linked credit agreements, the good or service and the cash payment price;
- f) the debit interest rate, the conditions for the application of the debit interest rate and,

indices or reference rates, if any, applicable to the initial borrowing rate, as well as the periods, conditions and manner of adjustment of the borrowing rate. If different debit interest rates apply in certain circumstances, the above information shall be provided for all applicable debit interest rates;

g) the annual percentage rate of charge and the total amount to be paid by the consumer, illustrated by a representative example, indicating all the assumptions used in the calculation of the annual percentage rate of charge; if the consumer has informed the creditor of his wishes regarding one or more elements of his credit, for example the duration of the credit agreement or the total amount of credit, the creditor must take these elements into account; if a creditor has given the creditor an indication of his wishes, the creditor must take these elements into account; if a creditor has given the creditor an indication of his wishes, the creditor must take these elements into account.

KKG

If the credit agreement provides for different drawdown procedures with different charges or borrowing rates and the creditor makes the assumption set out in Annex 1, Part II b), the creditor shall indicate that other drawdown procedures may result in a higher annual percentage rate of charge for the type of credit agreement;

h) the amount, number and periodicity of the payments to be made by the consumer and, if applicable, the order in which the payments will be applied to different outstanding balances to which different debit interest rates apply for the purpose of repayment;

i) where applicable, the charges for maintaining one or more accounts for recording payment transactions and the credit amounts drawn down, unless the opening of a corresponding account is optional, together with the charges for using a means of payment with which both payment transactions and withdrawals may be made, other charges under the credit agreement and the conditions under which these charges may be changed;

k) if applicable, the reference to notarization fees to be paid by the consumer upon conclusion of the credit agreement;

l) if applicable, the obligation to conclude a contract related to the credit agreement, in particular for insurance, if the conclusion of such a contract is a prerequisite for the credit to be granted at all or under the contractual conditions provided for;

m) the applicable rate of default interest and the manner of its possible adjustment, as well as any default costs incurred;

- n) a warning about the consequences of non-payment;
  - o) any collateral that may be required;
  - p) the existence or non-existence of a right of withdrawal;
  - q) the right to early repayment and, where applicable, the information on the lender's entitlement to compensation and the method of calculating such compensation in accordance with Art. 17;
  - r) the consumer's right to be informed without delay and free of charge, in accordance with Article 9(2), of the result of a database query to assess creditworthiness;
  - s) the consumer's right to receive a copy of the draft credit agreement free of charge upon request. This provision does not apply if the creditor is not willing to conclude a credit agreement with the consumer at the time of the request; and
  - t) if applicable, the period during which the lender is bound by the pre-contractual information.
- 3) Any additional information provided by the creditor to the consumer shall be provided in a separate document that may be attached to the relevant "Standard Information for Consumer Loans" form.
- 3a) If the credit agreement refers to a reference value within the meaning of Article 3(1)(3) of Regulation (EU) 2016/1011, the creditor or, if applicable, the credit intermediary shall inform the consumer in a separate document, which may be attached to the standard consumer credit information, of the name of the reference value and its administrator, as well as its possible impact on the consumer.
- 4) In the case of communication by telephone within the meaning of Art. 6 of the Remote Financial Services Act, the description of the main features of the financial service to be provided must contain at least the information provided for in paragraph 2(c), (d), (e), (f) and (h) of this Article and the annual percentage rate of charge, illustrated by means of a representative example, as well as the total amount to be paid by the consumer.
- 5) If the agreement was concluded at the consumer's request by means of a means of distance communication that does not permit the provision of the information referred to in paras. 1 to 3, in particular in the case referred to in para. 4, the creditor shall notify the consumer of the complete information without undue delay after the conclusion of the credit agreement.



The customer shall provide the bank with pre-contractual information using the form "Standard information for consumer loans".

6) Upon request, the consumer shall receive, free of charge, a copy of the draft credit agreement in addition to the form "Standard Information for Consumer Credit". This provision does not apply if the creditor is not willing to conclude a credit agreement with the consumer at the time of the request.

7) If, under a credit agreement, payments made by the consumer do not serve to repay the consumer's debt directly in relation to the total amount of the credit, but to accumulate capital within the periods and on the conditions stipulated in the credit agreement or in an addendum thereto, the consumer is obliged to pay the principal.

contract to the credit agreement, the pre-contractual information provided under paras. 1 to 3 must clearly and concisely state that the credit agreement or the supplementary agreement does not provide for a guarantee of repayment of the total amount drawn down under the credit agreement, unless such a guarantee is provided.

8) The creditor and, where applicable, the credit intermediary are also obliged to provide the consumer with appropriate explanations, where applicable by explaining the pre-contractual information under paras. 1 to 3, the main features of the products offered and the possible specific effects of the products on the consumer, including the consequences in the event of the consumer defaulting on payment. The consumer should thus be able to assess whether the credit agreement meets his needs and financial situation.

#### Art. 6

b) *Certain credit agreements in the form of short-term overdraft facilities and certain specific credit agreements*

1) The creditor and, where applicable, the credit intermediary shall, in good time before the consumer is bound by a credit agreement or an offer within the meaning of Art. 2 paras. 3, 5 and 6, provide the consumer, on the basis of the credit terms offered by the creditor and, where applicable, the preferences expressed and information provided by the consumer, with the information necessary for the consumer to compare different offers and make an informed decision as to whether to conclude a credit agreement.

2) The information referred to in paragraph 1 must include the following:

a) the type of credit;

- b) the identity and address of the creditor and, if applicable, the identity and address of the credit intermediary involved;
  - c) the total amount of credit;
  - d) the term of the credit agreement;
  - e) the borrowing rate, the conditions of application of the borrowing rate and indices or reference rates applicable to the initial borrowing rate; the charges payable from the date of conclusion of the credit agreement and, if applicable, the conditions under which these charges may be changed;
  - f) the annual percentage rate of charge, explained using representative examples and stating all assumptions used in the calculation of the annual percentage rate of charge;
  - g) the conditions and procedure for terminating the credit agreement;
  - h) in the case of credit agreements in the form of short-term overdraft facilities, where applicable, the indication that the consumer may be required to repay the full amount of the credit at any time;
  - i) the interest rate applicable in the event of default and the manner of any adjustment thereof, as well as any default costs incurred;
  - k) the consumer's right to be informed without delay and free of charge under Article 9(2) of the result of a database query to assess creditworthiness;
  - l) in the case of credit agreements in the form of a short-term overdraft facility, information on the relevant costs as of the conclusion of the credit agreement and, if applicable, the conditions under which these costs may be changed; and
  - m) if applicable, the period during which the lender is bound by the pre-agreed information.
- 3) The creditor or, where applicable, the credit intermediary shall provide the consumer with the information referred to in paragraph 2 on paper or on another durable medium, all highlighted in the same way. This may be done by using the form "Standard information for overdrafts and debt rescheduling" as set out in Annex 3. The creditor shall be deemed to have fulfilled his information obligations if he has submitted the said form.
- 4) In the case of credit agreements in the form of a short-term overdraft facility, no APR must be stated in the pre-contractual information requirements.

5) In the case of credit agreements that provide for the lender and consumer to agree on deferment or repayment terms if the consumer has not fulfilled his obligations under the original credit agreement, the consumer must also be informed of the following:

a) the amount, number and periodicity of payments to be made by the consumer and, where applicable, the order in which payments are to be made on different outstanding balances for which different-

rates shall be credited for the purpose of repayment; and

b) the right to early repayment and, where applicable, information on the lender's entitlement to compensation and the method of determining such compensation.

6) If the cases referred to in paragraph 5 are credit agreements in the form of a short-term overdraft facility, only the provisions referred to in paragraphs 1 to 3 shall apply.

7) In the case of communication by telephone or if the consumer requests that the overdraft facility be available immediately, the description of the main characteristics of the financial service must contain at least the information provided for in par. 2 letters c, e, f and h. In the case of credit agreements within the meaning of par. 5, the description of the main features must also include a determination of the term of the credit agreement.

8) Notwithstanding the exemption in Art. 2(2)(e), credit agreements in the form of an overdraft facility where the credit must be repaid within one month must at least comply with the requirements of the first sentence of paragraph 7.

9) Upon request, the consumer shall receive, free of charge, in addition to the information referred to in paras. 1 to 7, a copy of the draft credit agreement containing the contractual information referred to in Articles 10 and 11, if applicable. This provision shall not apply if the creditor is not prepared to conclude a credit agreement with the consumer at the time of the request.

10) In the event that the agreement was concluded at the consumer's request by means of a means of distance communication that does not allow for the provision of the information referred to in paras. 1 to 3 and 5, including the cases referred to in par. 7, the creditor shall, without undue delay after the conclusion of the credit agreement, fulfill its obligations under paras. 1 to 3 and 5 by providing to the consumer

submits the contractual information according to Art. 10 and 11, if applicable.

Art. 7

*c) Exceptions*

The obligation to provide the pre-contractual information under Articles 5 and 6 does not apply to suppliers of goods or services,

who are only involved in a subordinate function as credit intermediaries. This does not affect the creditor's obligation to provide the consumer with the required pre-contractual information.

Art. 8

*Evaluation of the consumer's creditworthiness*

1) The creditor must assess the consumer's creditworthiness prior to the conclusion of the contract on the basis of sufficient information, which he may request from the consumer; if necessary, he must also obtain information from an available database.

2) If the contracting parties agree to change the total amount of credit after the conclusion of the credit agreement, the creditor shall update the financial information available to it about the consumer to the new status and assess the consumer's creditworthiness before any significant increase in the total amount of credit.

III. Access to databases

Art. 9

*Access to databases for cross-border loans*

1) In the case of cross-border credit, access to databases used to assess the creditworthiness of consumers must also be granted to creditors from other EEA member states or Switzerland without discrimination.

2) If a creditor rejects a credit application on the basis of a database query, he shall inform the consumer without delay and free of charge of the result of the query and of the information contained in the database concerned. The information shall not be provided if it is not permitted under other legal provisions or if it jeopardizes public order or safety.

3) Retrieved

IV. Information and rights arising from credit agreements

*Mandatory disclosures in credit agreements*

## Art. 10

a) *In general*

- 1) Without prejudice to the validity of the legal transaction, credit agreements shall be drawn up on paper or on another durable medium. The lender shall provide a copy of the credit agreement to all contracting parties after the conclusion of the agreement.
- 2) The credit agreement must contain the following information in a clear and concise form:
- a) the type of credit;
  - b) the identity and addresses of the contracting parties and, if applicable, the identity and address of the credit intermediary involved;
  - c) the term of the credit agreement;
  - d) the total amount of credit and the conditions for drawing it;
  - e) in the case of credit in the form of deferred payment for a specific good or service or, in the case of linked credit agreements, the good or service and the cash payment price;
  - f) the borrowing rate, the conditions for the application of the borrowing rate and, if available, indices or reference rates relating to the initial borrowing rate, and the periods, conditions and manner of adjustment of the borrowing rate; if different borrowing rates apply in different circumstances, the above information shall be provided for all borrowing rates to be applied;
  - g) the annual percentage rate of charge and the total amount payable by the consumer, calculated at the time of conclusion of the credit agreement; all assumptions used in the calculation of this interest rate must be stated;
  - h) the amount, number and periodicity of the payments to be made by the consumer and, if applicable, the order in which the payments will be applied to different outstanding balances to which different debit interest rates apply for the purpose of repayment;
  - i) in the case of loan repayment under a credit agreement with a fixed term, the right of the consumer to receive, upon request and free of charge, a statement in the form of a repayment schedule at any time during the total term of the credit agreement. The repayment schedule shows which payments are to be made in

the time intervals at which the payments are to be made and the terms of such payments; the schedule shall break down the individual periodic repayments according to the repayment of the loan, the interest calculated according to the borrowing rate and, if applicable, all additional costs; in the case of a credit agreement where no fixed interest rate has been agreed upon or the additional costs may be changed, the repayment schedule shall state in a clear and concise manner that the data in the repayment schedule shall be valid only until the next change in the borrowing rate or the additional costs according to the credit agreement;

k) if the payment of charges and interest without principal repayment is provided for, a statement of the periods and conditions for the payment of debit interest and the related recurring and non-recurring charges;

l) where applicable, the charges for maintaining one or more accounts for booking the payment transactions and the drawn credit amounts, unless the opening of an account is optional, together with the charges for using a means of payment with which both payment transactions and withdrawals can be made, other charges under the credit agreement and the conditions under which these charges may be changed;

m) the rate of interest on arrears in accordance with the regulation in force at the time of the conclusion of the credit agreement and the manner of its adjustment, if any, as well as any costs of arrears incurred;

n) a warning about the consequences of non-payment;

o) where applicable, an indication of any applicable certification fees;

p) if applicable, the requested securities and insurances;

q) the existence or non-existence of a right of withdrawal as well as the time limit and other modalities for exercising the right of withdrawal, including information on the consumer's obligation to repay the capital drawn down, the interest pursuant to Art. 15 par. 4 and the amount of interest per day;

r) Information on the rights arising from Art. 16 and on the conditions for exercising these rights;

s) the right to early repayment, the procedure for early repayment and, where applicable, information on the lender's entitlement to compensation and the method of calculating such compensation;

- t) the modalities to be followed when exercising the right to terminate the credit agreement;
  - u) an indication of whether the consumer has access to an out-of-court complaint and redress procedure and, if so, the conditions for such access;
  - v) other contractual terms and conditions, if any; and
  - w) if applicable, the name and address of the competent supervisory authority.
- 3) In the case of loan repayment under a fixed-term loan agreement, the lender provides the consumer with a statement in the form of a repayment schedule free of charge and at any time during the total term of the loan agreement.
- 4) If, in the case of a credit agreement, payments made by the consumer are not for the immediate repayment of his debt in relation to the total amount of credit, but for the accumulation of capital within the periods and on the terms provided for in the credit agreement or in a supplementary agreement to the credit agreement, the information provided under paragraph 2 shall clearly and concisely state that the credit agreement or supplementary agreement does not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

#### Art. 11

##### *b) Credit agreements in the form of short-term overdraft facilities*

In the case of credit agreements in the form of short-term overdraft facilities, the credit agreement must contain the following information in a clear and concise form:

- a) the type of credit;
- b) the identity and addresses of the contracting parties and, if applicable, the identity and address of the credit intermediary involved;
- c) the term of the credit agreement;
- d) the total amount of credit and the conditions of drawdown;
- e) the borrowing rate, the conditions for the application of the borrowing rate and, if any, indices or reference rates relating to the initial borrowing rate, and the periods, conditions and manner of adjustment of the borrowing rate and, if different borrowing rates apply in different circumstances, the aforementioned information shall be provided for all applicable borrowing rates;

- f) the total cost of the credit to the consumer, calculated at the time of conclusion of the credit agreement; all assumptions used in the calculation of this interest in accordance with Art. 20 par. 2 and 3 in conjunction with Art. 3 par. 1 let. g and i must be stated;
- g) the notice that the consumer may be required to repay the full amount of the credit at any time;
- h) the modalities to be followed when exercising the right to terminate the credit agreement; and
- i) Information on the relevant charges from the date of conclusion of the credit agreement and, if applicable, the conditions under which these charges may be changed.

#### Art. 12

##### *Information on the debit interest rate*

- 1) The consumer shall be informed of any change in the debit interest rate on paper or on another durable medium before the change takes effect.
- 2) The information must contain the amount of the payments to be made after the new debit interest rate takes effect. If the number or periodicity of the payments to be made changes, details must also be provided.
- 3) However, the contracting parties may agree in the credit agreement that the information pursuant to paras. 1 and 2 shall be provided to the consumer at regular intervals if the change in the borrowing rate is due to a change in a reference interest rate, the new reference interest rate is made publicly available in a suitable manner and the information on the new reference interest rate can also be inspected at the creditor's business premises.

#### Art. 13

##### *Obligations under credit agreements in the form of an overdraft facility*

- 1) If a consumer is granted credit in the form of an overdraft facility, the creditor must inform the consumer regularly by means of a statement of account on paper or on another durable medium:
  - a) the exact period to which the account statement refers;
  - b) the amounts drawn down and the date of drawdown;
  - c) the balance and the date of the last account statement;



- d) the new balance;
  - e) the respective date and amount of the consumer's payments;
  - f) the debit interest rate applied;
  - g) any charges levied; and
  - h) the minimum amount to be paid, if any.
- 2) In addition, the consumer must be informed of any increases in the debit interest rate or the charges levied on paper or on another durable medium before the change takes effect.
- 3) However, the contracting parties may agree in the credit agreement that the information on the change in the borrowing rate shall be provided in accordance with par. 1 if this change is due to a change in a reference interest rate, the new reference interest rate is made publicly available in an appropriate manner and the information on the new reference interest rate can also be inspected at the creditor's business premises.

#### Art. 14

##### *Unlimited credit agreements*

- 1) The consumer may terminate an open-end credit agreement at any time free of charge, unless the parties have agreed on a notice period. The notice period may not exceed one month.
- 2) If the parties have agreed in the credit agreement, the creditor may terminate an open-end credit agreement by giving at least two months' notice; the consumer must be notified of the termination on paper or on another durable medium.
- 3) Provided that the parties have made an agreement to this effect in the credit agreement, the creditor may, for objectively justified reasons, withdraw the consumer's right to draw down credit amounts under an open-end credit agreement. The creditor must inform the consumer of the withdrawal and the reasons for it on paper or on another durable medium as far as possible before the withdrawal, but no later than immediately after the withdrawal, unless such information is inadmissible under other legal provisions or endangers public order or safety.

#### Art. 15

##### *Right of withdrawal*

1) The consumer may revoke the credit agreement within 14 calendar days without giving any reason.

2) This revocation period begins:

a) on the date of conclusion of the credit agreement; or

b) on the date on which the consumer receives the contractual terms and conditions and the information pursuant to Art. 10 and 11, provided that this date is after the date referred to in subparagraph a).

3) If the consumer wishes to exercise his right of withdrawal, he shall declare the withdrawal to the creditor in accordance with the information given to him by the creditor pursuant to Art. 10(2)(q) in order to make it effective before the expiry of the period referred to in para. 1. The exercise of the right of withdrawal must be in writing in order to be legally effective. The revocation period shall be deemed to have been observed if such notice, provided that it is given on paper or on another durable medium available and accessible to the creditor, is dispatched before the expiry of the period.

4) If the loan has already been disbursed prior to the revocation, the consumer shall immediately, but no later than 30 calendar days after sending the notice of revocation to the lender, return to the lender the loan, including the amounts accrued from the date of the drawdown of the loan until the date of repayment of the loan.

interest accrued. The interest shall be calculated on the basis of the agreed debit interest rate. In the event of revocation, the creditor shall not be entitled to any further compensation to be paid by the consumer, with the exception of compensation for fees paid by the creditor to public authorities, which the creditor may not claim back.

5) If an ancillary service is provided in connection with the credit agreement by the creditor or by a third party on the basis of an agreement between the third party and the creditor, the consumer shall no longer be bound by the agreement on the ancillary service if he exercises his right to withdraw from the credit agreement under this Article.

6) If the consumer has a right of withdrawal under this article, Art. 8 of the Distance Financial Services Act and Art. 4 paras. 1 to 3 of the Consumer Protection Act shall not apply in the case of contracts concluded away from business premises.

7) This Article shall be without prejudice to any legislation providing for a time limit within which performance of the contract may not commence.

Art. 16

*Related credit agreements*

1) If the consumer has exercised a right of withdrawal from a contract for the delivery of goods or the provision of services, he is no longer bound by a related credit agreement.

2) If the goods or services covered by a linked credit agreement are not or only partially delivered or do not comply with the goods delivery or service contract, the consumer may assert his rights against the creditor if he has asserted his rights against the supplier or service provider but has not been able to enforce them. The following conditions must be met:

a) There must be an agreement between the lender and the supplier according to which loans to customers of this supplier are granted exclusively by the lender.

b) The consumer receives the credit under these arrangements.

c) The goods or services covered by the credit agreement are not delivered or are delivered only in part or do not comply with the delivery contract.

3) Paragraphs 1 and 2 apply without prejudice to other legal provisions under which a creditor is jointly and severally liable to any claims that the consumer may have against the supplier or the service provider if the purchase of goods or services is financed by the supplier through a credit agreement.

Art. 17

*Early repayment*

1) The consumer may at any time discharge his obligations under a credit agreement in whole or in part. In such cases, the consumer has the right to a reduction of the total cost of the credit, which is based on the interest and the cost for the remaining term of the contract.

2) In the event of early repayment of the loan, the lender may pay an adequate and objectively justified compensation for the incurred costs directly related to the early repayment of the loan.

if the early repayment falls within a period for which a fixed borrowing rate has been agreed.

3) The compensation under paragraph 2 may not exceed 1% of the amount of the loan repaid early if the period between the early repayment and the agreed expiry date of the loan agreement exceeds one year. If the period does not exceed one year, the compensation shall not exceed 0.5% of the loan amount repaid early.

4) Compensation for early repayment may not be demanded:

a) if the repayment is made on the basis of an insurance contract which, according to the agreement, is to guarantee the repayment of the loan;

b) in the case of overdraft facilities; or

c) if the repayment falls within a period for which no fixed borrowing rate has been agreed.

5) Under no circumstances may the compensation exceed the amount of interest that the consumer would have paid in the period between the early repayment and the agreed end of the term of the credit agreement.

#### Art. 18

##### *Subrogation*

1) If the creditor's claims under a credit agreement or the credit agreement itself are assigned to a third party, the consumer may assert against the new creditor the defenses to which he was entitled against the original creditor, including the set-off of counterclaims.

2) The creditor shall inform the consumer of the assignment under paragraph 1, unless the original creditor, with the consent of the assignee, continues to act as creditor vis-à-vis the consumer.

#### Art. 19

##### *Overrun*

1) A contract for the opening of a current account, which gives the consumer the possibility of overrunning, must additionally contain the information about:

a) the borrowing rate, the conditions for the application of the borrowing rate, and indices or reference rates applicable to the initial borrowing rate; and

- b) the charges to be paid from the date of conclusion of the contract and, if applicable, the conditions under which these charges may be changed.
- 2) The creditor must regularly provide the consumer with the information under Paragraph 1 on paper or on another durable medium.
- 3) In the event of a significant overrun for a period of more than one month, the creditor shall immediately inform the consumer on paper or on another durable medium about:
- a) the existence of an overrun;
  - b) the amount in question;
  - c) the debit interest rate; and
  - d) any contractual penalties, charges or interest on arrears.

V. Effective annual  
interest rate Art.  
20

*Calculation of the annual percentage rate of charge*

- 1) The annual percentage rate of charge, which on an annual basis establishes equality between the counterpart values of the total present or future obligations (drawn credit amounts, repayments and charges) of the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Part I of Annex 1.
- 2) The calculation of the annual percentage rate of charge is based on the total cost of the credit to the consumer, with the exception of the costs to be borne by the consumer in the event of non-performance of any of his obligations under the credit agreement, as well as the costs, other than the purchase price, to be borne by the consumer when acquiring goods or services, regardless of whether the transaction is a cash transaction or a credit transaction.
- 3) The costs of maintaining an account in which both payments and drawn credit amounts are recorded, the costs of using a means of payment with which both payments can be made and credit amounts can be drawn, and other costs of payment transactions are taken into account as the total cost of the credit to the consumer, unless the opening of the account is optional and the costs associated with the account are clearly and separately identified in the credit agreement or in another agreement concluded with the consumer.

4) The calculation of the annual percentage rate of charge is based on the assumption that the credit agreement is valid for the agreed period and that the lender and the consumer will fulfill their obligations under the terms and on the dates stipulated in the credit agreement.

5) In credit agreements with clauses according to which the borrowing rate and, where applicable, the charges included in the APR but whose quantification is not possible at the time of its calculation may be changed, the APR shall be calculated on the assumption that the borrowing rate and the other charges, measured against the original level, remain fixed and apply until the end of the credit agreement.

6) If necessary, the additional assumptions listed in Annex 1 may be used for the calculation.

## VI. Credit

intermediary

Art. 21

### *Certain obligations of the credit intermediary*

1) The credit intermediary must indicate, both in its advertising and in the documents intended for the consumer, the scope of its powers and, in particular, make it clear whether it works exclusively with one or more creditors or as an independent credit intermediary.

2) If the consumer has to pay a fee to the credit intermediary for its services, this fee shall be disclosed to the consumer and agreed between the consumer and the credit intermediary on paper or on another durable medium before the conclusion of the credit agreement.

3) At the same time, the credit intermediary shall notify the creditor of the fee, if any, payable by the consumer to him for his services for the purpose of calculating the effective annual interest rate.

## VII. Mandatory law

Art. 22

### *Indispensability*

The provisions of this law may not be deviated from to the disadvantage of the consumer.

## VIII. Out-of-court dispute resolution

Art. 23

### *Arbitration board*

- 1) For the settlement of disputes between creditors or credit intermediaries on the one hand and consumers on the other, the government shall designate a conciliation board by ordinance.
- 2) The task of the conciliation board is to mediate between the parties in a suitable manner in the event of a dispute and in this way to bring about an agreement between the parties.
- 3) If no agreement can be reached between the parties, they shall be referred to the ordinary legal process.
- 4) In the case of cross-border disputes, the conciliation body cooperates with conciliation bodies of other EEA member states concerned as well as Switzerland.
- 5) The Government shall regulate the details, in particular the organizational structure, composition and procedure, by ordinance.

#### IX. Civil law effects Art. 24

##### *Invalidity*

- 1) Failure to comply with Articles 10, 11, 13 and 19 shall render the contract of sale null and void.
- 2) If the credit agreement is void, the consumer shall repay the credit amount already received or claimed until the expiration of the credit period, but shall owe neither interest nor costs.
- 3) The loan is to be repaid in equal installments, each one month apart, unless the agreement provides for longer intervals.

#### X. Penal provisions

##### Art. 25

##### *Transgressions*

- 1) The Office of Economic Affairs shall, unless the act constitutes a criminal offense within the jurisdiction of the courts or is punishable by a more severe penalty under other administrative penal provisions, impose a fine of up to 5,000 francs, or 20,000 francs in the case of a repeat offense, on anyone who:
  - a) advertises credits without the information required by Art. 4 or with false information;
  - b) in the pre-contractual information required under Articles 5 and 6, false information

or does not or not fully comply with the information obligations pursuant to Art. 5 and 6;

c) does not evaluate the consumer's creditworthiness in accordance with Art. 8 par. 1;

d) fails to include in a credit agreement all the information required by Articles 10 and 11 or includes false information;

e) not informed of a change in the debit interest rate in accordance with Art. 12;

f) in the case of an account with an overdraft facility, includes incorrect information in the information provided pursuant to Articles 13 and 19 or fails to comply with the information requirements pursuant to Articles 13 and 19 or fails to comply with them in full;

g) as a credit intermediary does not fulfill the obligations under Art. 21.

2) The Office of National Economy shall inform the authorities responsible for the supervision of credit grantors or credit intermediaries of the imposition of penalties under paragraph 1.

#### Art. 26

##### *Responsibility*

If the offences are committed in the business operations of a legal entity or a general or limited partnership or sole proprietorship, the penal provisions shall apply to the persons who acted or should have acted on their behalf, but with joint and several liability of the legal entity, partnership or sole proprietorship for the fines, penalties and costs.

#### Xa. Privacy

##### *Processing of personal data*

#### Art. 26a

##### *a) through lenders and credit intermediaries*

1) Lenders and credit intermediaries may process personal data, including personal data about criminal convictions and criminal offenses, about borrowers that they need in connection with entering into or arranging a credit agreement.

2) Creditors and credit intermediaries must take appropriate measures to ensure that, in particular, the principles for the processing of personal data under data protection legislation are complied with.

#### Art. 26b



b) *by the Office of National Economy*

- 1) The Office of National Economy may process personal data, including personal data on criminal convictions and offenses, on creditors, credit intermediaries, and credit recipients to the extent necessary for the performance of its duties under this Act.
- 2) The Office of National Economy may transmit data pursuant to para. 1 to other competent bodies and authorities as well as courts and the public prosecutor's office if they require the data for the performance of their statutory duties.

XI. Transitional and final provisions Art. 27

*Executive Orders*

The Government shall issue the regulations necessary for the implementation of this Act.

Art. 28

*Transitional provisions*

- 1) Contracts concluded before the date of entry into force of this Act shall be governed by the previous law.
- 2) Articles 12 to 14, 18 and 19 paras. 2 and 3 shall be applied to existing open-end credit agreements no later than six months after the entry into force of this Act.

Art. 29

*Repeal of previous law*

It is repealed:

- a) Act of October 22, 1992 on Consumer Credit, LGBl. 1993 No. 50;
- b) Act of 14 September 1994 concerning the amendment of the Consumer Credit Act, LGBl. 1994 No. 67;
- c) Act of 26 November 1999 on the Amendment of the Consumer Credit Act, LGBl. 2000 No. 18.

Art. 30

*Entry into force*

This Act shall enter into force on May 1, 2012.

## **X. Package Travel Act**

from 4 December 2019

### **I. General provisions Art. 1**

#### *Scope*

- 1) This Act applies to package travel contracts concluded between an entrepreneur and a traveler, as well as to contracts for the mediation of related travel services concluded between an entrepreneur and a traveler.
- 2) It does not apply to contracts for:
  - a) Package tours and related travel services lasting less than 24 hours, provided they do not include an overnight stay;
  - b) Package tours and related travel services that are offered or arranged only occasionally and without the intention of profit and only to a limited group of travelers;
  - c) Package tours and related travel services, if the contract is concluded on the basis of a general agreement on the organization of business travel between two entrepreneurs.

#### **Art. 2**

##### *Implementation of EEA legislation*

- 1) This Act serves to implement Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel, package holidays and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).
- 2) The valid version of the EEA legal provisions referred to in this Act results from the promulgation of the decisions of the EEA Joint Committee in the Liechtenstein Gazette pursuant to Art. 3(k) of the Promulgation Act.

#### **Art. 3**

##### *Terms and designations*

- 1) For the purposes of this Act shall be deemed to include:

## a) Travel services:

1. the carriage of one person;

2. the accommodation of a person, unless it is an essential part of the transportation of the person and is not for residential purposes;

3. car rental or the rental of other motor vehicles pursuant to Art. 3 No. 11 of Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (OJ. L 263, 9.10.2007, p. 1), or of motorcycles of driver's license category A according to Art. 4(3)(c) of Directive 2006/126/EC on driver's licenses (OJ L 403, 30.12.2006, p. 18);

4. any other tourist service that is not an integral part of a travel service according to items 1, 2 or 3;

b) Package: a combination of at least two different types of travel services for the purpose of the same trip, if:

1. these services are put together by an entrepreneur at the request of or in accordance with a choice made by the traveler before the conclusion of a single contract for all services; or

2. these services regardless of whether separate contracts are concluded with the respective providers of the travel services:

aa) purchased at a single distribution point and selected before the traveler agrees to pay;

bb) offered, contracted for, or invoiced at a lump sum or total price;

cc) are advertised or contractually promised under the designation "package tour" or a similar designation;

dd) are compiled after the conclusion of a contract in which the entrepreneur grants the traveler the right to choose among different types of travel services; or

ee) are contractually promised to the traveler by individual entrepreneurs via linked online booking procedures, in which the traveler's name, payment data and e-mail address are transmitted from the entrepreneur with whom the first contract was concluded to one or more other entrepreneurs

and a contract is concluded with at least one of the latter entrepreneurs no later than 24 hours after confirmation of the booking of the first travel service.

A combination of travel services in which only one type of travel service as per a) 1, 2 or 3 is combined with one or more tourist services as per a) 4 is not a package if the last-mentioned services are not included in the package:

1. Do not constitute a significant portion of the total value of the combination (sentence 3), are not advertised as an essential feature of the combination, and are not otherwise an essential feature of the combination; or
2. are not selected and purchased until after the provision of the travel service has commenced in accordance with subparagraphs (a)(1), (2) or (3).

If tourist services account for 25% or more of the total value of the combination, it is generally to be assumed that they represent a significant share within the meaning of sentence 2 item 1;

c) Package travel contract: a contract for a package travel as a whole or, if the travel is offered on the basis of separate contracts, all contracts for the travel services combined in the package;

d) Start of the package: that point in time at which the provision of the travel services combined in a package begins;

e) linked travel services: at least two different types of travel services contractually promised to a traveler in separate contracts with the respective providers of the travel services for the purpose of the same trip that is not a package trip, if an entrepreneur arranges for the following:

1. on the occasion of a single visit to or contact with its distributor, the separate selection and separate payment of each travel service by travelers; or
2. in a targeted manner, the purchase of at least one additional travel service from another entrepreneur, provided that the additional contract with the other entrepreneur is concluded no later than 24 hours after confirmation of the booking of the first travel service.

If a traveler is contractually promised only one type of travel service pursuant to subparagraphs a(1), (2) or (3) and one or more tourist services pursuant to subparagraph a(4), these are not linked travel services if the latter services do not account for a significant proportion of the value of the combination of

constitute (sentence 3), are not advertised as an essential feature of the combination and are not otherwise an essential feature of the trip.

If tourist services account for 25% or more of the value of the combination, it is generally to be assumed that they represent a significant share within the meaning of sentence 2;

f) Traveler: any person who intends to enter into a contract subject to the provisions of this Act or who is entitled to receive travel services under such a contract;

g) Tour operator: an entrepreneur who, either directly or through another entrepreneur or jointly with another entrepreneur.

package tours and contractually agrees to or offers them, or an entrepreneur who transmits the traveler's data to another entrepreneur in the case of linked online booking procedures pursuant to subparagraph b(2)(ee);

h) Travel agent: an entrepreneur, distinct from the tour operator, who contracts or offers package tours put together by a tour operator;

i) Entrepreneur: any natural or legal person who is an entrepreneur according to Article 1 of the Consumer Protection Act;

k) Establishment of an entrepreneur: an establishment within the meaning of Article 5(1)(d) of the Services Act;

l) durable medium: any medium which enables the traveler or the contractor to store information addressed personally to him/her in such a way that he/she may subsequently consult it for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the stored information;

m) unavoidable and exceptional circumstances: circumstances beyond the control of the person invoking them, provided that the consequences of these circumstances could not have been avoided even if all reasonable precautions had been taken;

n) Lack of conformity: the non-performance or defective performance of the travel services included in a package;

o) Distribution points:

1. all business premises, whether movable or immovable;

2. Retail websites or similar online sales platforms, even if presented to travelers as a unified platform;
3. Telephone services;
- p) Return transportation: the arrangement of the traveler's return to the place of departure or to another place agreed upon by the contracting parties.
- 2) In addition, the definitions of Art. 3 of Directive (EU) 2015/2302 shall apply.
- 3) The personal and functional terms used in this Act shall be understood to mean members of the male and female genders.

#### Art. 4

##### *Ineffective agreements*

Insofar as agreements to the detriment of the traveler deviate from the provisions of this law, they are invalid.

#### II. Information obligations and content of the package travel

##### contract Art. 5

##### *Pre-contractual information*

1) Before the traveller is bound by a package travel contract or his contractual statement, the tour operator and, if the package is contracted through a travel agent, also the travel agent, shall provide him with the relevant standard information sheet as set out in Annex 1, Parts A or B, and, where this information is relevant to the package concerned, inform him of the following:

a) the essential characteristics of the travel services, such as:

1. Destinations, itinerary and length of stay with the respective dates and, if accommodation is included, the number of nights included;
2. Means of transport including their characteristics and class, place, day and time of departure and return, duration and places of intermediate stops as well as connecting connections, but if an exact time is not yet possible, the approximate time of departure and return;
3. Location, main features and, if applicable, tourist classification of the accommodation according to the rules of the respective country of destination;
4. Meals;

5. Sightseeing, excursions or other services included in the agreed total price of the package tour;
  6. if not apparent from the context, whether any of the travel services are provided to the traveler as part of a group and, if so, the approximate size of the group, if possible;
  7. if the traveler's use of other tourist services depends on effective oral communication, the language in which those services are provided; and
  8. an indication of whether the trip is generally suitable for persons with reduced mobility and, at the request of the traveler, detailed information on the suitability of the trip, taking into account the needs of the traveler;
- b) the company, address, telephone number and, if applicable, e-mail address of the tour operator and, if applicable, the travel agent;
  - c) the total price of the package, including taxes and, where applicable, all additional fees, charges and other costs or, if these costs cannot be determined before the contract is concluded, the nature of any additional costs for which the traveler may still have to pay;
  - d) the payment modalities including the amount or percentage of the price to be paid as a deposit, the schedule for the payment of the balance or the financial securities to be provided by the traveler;
  - e) the minimum number of participants required for the performance of the package tour, including the withdrawal period pursuant to Art. 11 Para. 3 Let. a No. 1;
  - f) general passport and visa requirements of the country of destination, including approximate deadlines for obtaining visas and for completing health formalities;
  - g) the right of the traveler to withdraw from the contract at any time before the start of the package, in accordance with Art. 11, para. 1, against payment of an appropriate compensation or, if applicable, against payment of the compensation lump sums demanded by the tour operator;
  - h) optional or mandatory travel cancellation insurance of the traveler or insurance to cover the cost of assistance including repatriation in case of accident, illness or death.
- 2) If the package travel contract is concluded by telephone, the travel organizer shall have

The travel organizer and, if applicable, the travel agent shall provide the traveler with the information specified in the standard information sheet pursuant to Annex 1, Part B, and the information specified in paragraph 1, subparagraphs (a) to (h), insofar as this information is relevant for the package tour in question.

to issue.

3) In the case of package tours pursuant to Art. 3 Para. 1 Letter b No. 2 Subpara. ee, both the tour operator and the entrepreneur to whom the data are transmitted shall provide the traveler with the information provided for in Para. 1 Letters a to h insofar as this relates to the travel services offered by them. The tour operator must also provide the traveler with the standard information sheet in accordance with Annex 1, Part C, at the same time.

4) The information provided for in paras. 1, 2 and 3 shall be given in a clear, comprehensible and unambiguous manner. If this information is provided in writing, it must be legible.

5) It is incumbent on the tour operator and, if applicable, also on the travel agent to prove that the information obligations provided for in this provision are

have been fulfilled.

#### Art. 6

##### *Effect of pre-contractual information on the content of the contract*

1) The information provided to the traveler pursuant to Art. 5 (1) (a), (c), (d), (e) and (g) shall form an integral part of the package travel contract. Changes are only effective if they have been expressly agreed by the contracting parties. The tour operator and, if applicable, the travel agent shall inform the traveler of any changes to the pre-contractual information in a clear, comprehensible and unambiguous manner before the conclusion of the package travel contract.

2) If the tour operator and, if applicable, the travel intermediary have not fulfilled the obligation to inform about additional fees, charges and other costs according to Art. 5(1)(c), the traveler shall not bear the additional fees, charges and other costs.

#### Art. 7

##### *Content of the package travel contract and documents to be provided before the start of the package travel*

1) The package travel contract must be written in simple and understandable language and, if it is concluded in writing, must be legible. The tour operator or travel agent shall provide the traveller, at the time of conclusion of the package travel contract, with



or immediately thereafter a copy of the contract document or a confirmation of the contract on a durable medium. The traveler has

Entitled to a paper copy if the package travel contract was concluded in the simultaneous presence of the contracting parties. In the case of contracts concluded away from business premises pursuant to Art. 4(1)(a) of the Distance Selling and Foreign Transactions Act, a copy or confirmation of the package travel contract shall be provided to the traveler on paper or, if the traveler agrees, on another durable medium.

2) The contract document or the confirmation of the contract shall reflect the entire content of the contract, including the information provided for in Article 5, paragraph 1, letters a to h, as well as the following information:

a) special requirements of the traveler, which have become part of the contract;

b) Indications that the tour operator:

1. is responsible for the proper provision of all travel services provided for in the contract in accordance with Art. 12; and

2. is obliged to assist according to Art. 15 if the passenger is in difficulty;

c) the name, contact details and address of the institution providing the insolvency protection and, where applicable, the name and contact details of the competent authority in the EEA Member State concerned;

d) the name, address, telephone number, e-mail address and, if applicable, fax number of the Tour Operator's local representative, contact point or other service to which the Traveler may turn in order to contact the Tour Operator quickly and communicate with him without any particular effort, to request assistance from the Tour Operator when he is in difficulty or to complain about a lack of conformity that he perceives during the performance of the Package;

e) a reference to the fact that, according to Art. 12, para. 2, the traveler must immediately notify the tour operator of any lack of conformity that he/she becomes aware of during the performance of the package tour;

f) in the case of a minor traveler who is not accompanied by a parent or a person entrusted with his or her care and upbringing and authorized to do so

will, if the package travel contract includes his accommodation, information on how to establish a direct link with the minor or with the person responsible for him at his place of stay;

g) Information on existing internal complaint procedures and alternative dispute resolution procedures under the Alternative Dispute Resolution Act;

h) Information on the right of the traveler to transfer the contract to another traveler according to Art. 8.

3) In the case of package tours pursuant to Art. 3(1)(b)(2)(ee), the company to which the data is transferred shall inform the tour operator of the conclusion of the contract leading to the package tour. The entrepreneur shall provide the tour operator with the information that the latter needs to fulfill its obligations as a tour operator. As soon as the tour operator has been informed of the conclusion of a package tour, it shall provide the traveler with the information provided for in paragraph 2(a) to (h) on a durable medium.

4) The information provided for in paragraphs 2 and 3 shall be communicated in a clear, comprehensible and distinct manner.

5) The tour operator must provide the traveler in good time before the start of the package tour with the necessary booking receipts, vouchers, transport passes and entrance tickets, information on the scheduled departure times and, if applicable, on the deadlines for check-in, as well as on the scheduled stopovers, connections and arrival times.

6) The tour operator and, if applicable, the travel agent shall be responsible for proving that the obligations provided for in this provision concerning the contract document or confirmation of the contract and the provision of documents have been fulfilled.

III. Transfer and amendment of the package travel contract and withdrawal  
from the package travel contract

Art. 8

*Transfer of the package travel contract to another traveler*

1) The traveler may transfer the package travel contract to a person who meets all the conditions of the contract. For this purpose, he must inform the tour operator within a reasonable period before the start of the package.

of the transfer on a durable data medium. A notification of this no later than seven days before the start of the package tour.

is in any case considered appropriate.

2) The traveler who transfers the package tour contract and the person who enters into the contract shall be jointly and severally liable to the tour operator for the outstanding amount of the tour price and the additional fees, charges and other costs incurred as a result of the transfer. The tour operator shall inform the traveler transferring the contract of the actual costs of the transfer. These costs shall not be unreasonable and shall not exceed the actual costs incurred by the tour operator as a result of the transfer of the package tour contract.

3) The tour operator shall issue to the traveler who transfers the contract a document on the additional fees, charges and other costs resulting from the transfer of the package travel contract.

PRG

## Art. 9

### *Price change*

1) After the conclusion of the package travel contract, a price increase is only permissible if this possibility is expressly provided for in the contract and if the contract refers to the right of the traveler to a price reduction in accordance with paragraph 4. The package travel contract shall specify how price changes are to be calculated.

2) Furthermore, a price increase is only permissible if:

a) the tour operator has clearly and comprehensibly informed the traveler of the price increase at least 20 days before the start of the package on a durable medium, stating the reasons for the price increase and including a calculation thereof; and

b) it results directly from a change:

1. of the price of passenger transportation as a result of the cost of fuel or other energy sources;

2. the amount of taxes and duties to be paid for the contractually agreed travel services that are levied by third parties not directly involved in the provision of the package tour, including sojourn taxes, landing fees, import duties, and other taxes.

or disembarkation fees at \_\_\_\_\_ ports and corresponding fees at airports; or

3. the exchange rates applicable to the package tour.

3) If the price increase exceeds 8% of the price of the package tour, Art. 10 paras. 2 to 5 shall apply.

4) If the package travel contract provides for the possibility of price increases, the traveler is entitled to a price reduction corresponding to any reduction in the costs referred to in paragraph 2(b) between the conclusion of the contract and the start of the package.

5) In the event of a price reduction, the tour operator is entitled to deduct actual administrative expenses from the reimbursement owed to the traveler. At the request of the traveler, the tour operator shall provide evidence of these administrative expenses.

Art. 10

*Other changes to the package travel contract*

1) The tour operator may unilaterally change the contents of the package tour contract other than the price before the start of the package tour if:

- a) he has reserved this right in the contract;
- b) the change is immaterial; and
- c) he/she informs the traveler of the change in a clear, comprehensible and unambiguous manner on a durable medium.

2) If, before the start of the package, the tour operator is forced to significantly change one of the essential features of the travel services as defined in Art. 5, Para. 1, Letter a, or if he cannot meet the special requirements of the traveler as defined in Art. 7, Para. 2, Letter a, or if he proposes to increase the total price of the package by more than 8% as defined in Art. 9, the traveler may, within a reasonable period of time set by the tour operator, agree to the proposed change or withdraw from the contract without paying any compensation. If the traveler does not make a statement within the time limit, this shall be considered as consent to the change.

3) In case of withdrawal from the package travel contract according to paragraph 2, the traveler may agree to another package travel, if possible, of equivalent or higher quality as a substitute, if the organizer offers him this. Otherwise, the tour operator shall reimburse the traveler for all payments made by or on behalf of the traveler.

immediately, but no later than 14 days after receipt of the notice of withdrawal. Art. 13 paras. 2 to 5 shall be applied accordingly.

4) The tour operator shall inform the traveler without delay on a durable data carrier clearly, understandably and distinctly about:

- a) the proposed changes under paragraph 2 and, if applicable, under paragraph 5, their impact on the price of the package;
- b) the reasonable time limit within which the traveler must inform the tour operator of his decision under paragraph 2;
- c) the legal consequence of failure to declare provided for in the second sentence of subsection (2); and
- d) the package tour offered as a substitute, if any, and its price.

5) If the changes to the package travel contract according to paragraph 2 or the package travel offered as a substitute according to paragraph 3 result in a reduction in the quality or a reduction in the cost of the package travel, the traveler is entitled to a reasonable price reduction.

PRG

#### Art. 11

##### *Withdrawal from the package tour contract before the start of the package tour*

1) The traveler may withdraw from the package tour contract at any time before the start of the package tour without giving reasons. If the traveler withdraws from the package travel contract under this paragraph, the tour operator may demand payment of reasonable and justifiable compensation. The package travel contract may stipulate reasonable compensation lump sums, which are calculated according to the time interval between the withdrawal and the intended start of the package tour as well as according to the expected saved expenses and income from other uses of the travel services. If no lump sum compensation has been contractually agreed, the compensation shall correspond to the price of the package tour less the saved expenses and income from other uses of the travel services. At the request of the traveler, the tour operator must justify the amount of the compensation.

2) Without prejudice to the right of withdrawal under paragraph 1, the traveler may withdraw from the package tour contract before the start of the package tour without payment of compensation if unavoidable and extraordinary circumstances arise at the destination or in its immediate vicinity that make it impossible to carry out the package tour or to transport persons.

to the destination considerably. If the traveler withdraws from the package travel contract under this paragraph, he is entitled to full reimbursement of

of all payments made for the package tour, but not to additional compensation.

3) The tour operator may withdraw from the package tour contract before the start of the package tour against full reimbursement of all payments made for the package tour, but without payment of any additional compensation, if:

a) fewer persons than the minimum number of participants specified in the contract have registered for the package tour and the travel organizer's notice of cancellation is received by the traveler within the period specified in the contract, at the latest, however:

1. 20 days before the start of the package tour for trips of more than six days;
  2. seven days before the start of the package tour for trips between two and six days;
  3. 48 hours before the start of the package tour for trips lasting less than two days;
- or

b) the tour operator is prevented from fulfilling the contract due to unavoidable and extraordinary circumstances and his notice of withdrawal is received by the traveler immediately, but no later than before the start of the package tour.

4) In the event of withdrawal in accordance with the above paragraphs, the tour operator shall reimburse the traveler all amounts paid by him or on his behalf for the package tour in the event of withdrawal in accordance with paragraph 1, less compensation in accordance with this provision, without delay, but no later than 14 days from receipt of the notice of withdrawal.

IV. Provision of the contractual travel services, warranty and compensation for damages

Art. 12

*Provision of the contractual travel services*

- 1) The tour operator is responsible for the provision of all travel services agreed upon in the package travel contract, regardless of whether or not

these services are to be provided by him or other providers of travel services according to the contract.

- 2) The traveler must immediately notify the tour operator of any breach of contract that he perceives during the provision of the travel services agreed in the package travel contract, taking into account the respective circumstances.

3) If a contractually agreed travel service is not provided or is provided inadequately, the tour operator shall remedy the lack of conformity unless this is impossible or would involve disproportionate costs, taking into account the extent of the lack of conformity and the value of the travel service concerned.

4) If the tour operator does not remedy the lack of conformity with the contract within a reasonable period of time set by the traveler, contrary to his obligation under paragraph 3, the traveler may remedy the situation himself and demand compensation from the tour operator for the necessary tasks. The setting of a deadline by the traveler is not necessary if the tour operator refuses to remedy the breach of contract or if immediate remedy is necessary.

5) If a significant part of the agreed travel services cannot be provided in accordance with the contract, the tour operator shall offer the traveler, at no additional cost to the traveler, reasonable other arrangements for the continuation of the package tour which are, as far as possible, of equivalent or higher quality to the contractually agreed services. The same also applies if the traveler is not transported back to the place of departure in accordance with the contract. If the other arrangements offered by the tour operator result in a lower quality of the package tour compared to the contractually agreed services, the tour operator shall grant the traveler an appropriate price reduction. The traveler may only reject the proposed other arrangements if they are not comparable with the services agreed in the package travel contract or if the price reduction granted is not reasonable.

6) If the lack of conformity has a significant impact on the performance of the package tour and the tour operator does not remedy the lack of conformity within a reasonable period of time set by the traveler, the traveler may withdraw from the package tour contract without paying any compensation and, if applicable, make claims under Art. 13. If no other arrangements can be offered in accordance with paragraph 5 or if the traveler rejects the offered arrangements, the traveler is entitled to withdraw from the

other arrangements

according to the last sentence of paragraph 5, the traveler may be entitled to claim under Article 13 even without termination of the package travel contract. If the transport of persons is part of the package, the tour operator shall, in the cases referred to in this paragraph, also provide for the immediate return of the passenger by an equivalent transport service at no additional cost to the passenger.

7) If the return transport of the traveler agreed in the package travel contract is not possible due to unavoidable and extraordinary circumstances, the tour operator shall bear the costs for the necessary accommodation of the traveler, if possible in an equivalent category, for a maximum period of three nights. If longer accommodation periods are provided for in EEA legislation on passenger rights for the means of transport concerning the return of the passenger, these periods shall apply.

8) The limitation of costs under paragraph 7 shall not apply to persons with reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1) and persons accompanying them, pregnant women and unaccompanied minors, and persons requiring special medical care, provided that the tour operator was informed of the special needs of such persons at least 48 hours before the start of the package tour. For the purpose of limiting its obligation to bear the costs under paragraph 7, the tour operator may not invoke unavoidable and extraordinary circumstances if the carrier in question is liable under EEA law.

cannot refer to such circumstances.

Art. 13

*Price reduction and compensation*

1) The traveler is entitled to a reasonable price reduction for each period of the package tour affected by a lack of conformity; this does not apply if the tour operator proves that the lack of conformity is attributable to the traveler.

2) The traveler is entitled to reasonable compensation from the tour operator for the damage suffered as a result of the breach of contract. If the breach of contract was substantial, the claim for damages shall also include a claim for reasonable compensation for the loss of vacation enjoyment. The omission of a co-liability required by Art. 12, para. 2, of the

The passenger may be charged with contributory negligence if he/she fails to disclose a perceived breach of contract (§ 1304 ABGB). The compensation is to be paid immediately.

3) The traveler has no right to compensation if the tour operator proves that the lack of conformity:

a) is attributable to the traveler;



b) is attributable to a third party not involved in the provision of the travel services included in the package travel contract and the lack of conformity was neither foreseeable nor avoidable; or

c) is due to unavoidable and extraordinary circumstances.

4) Insofar as the scope of compensation or the conditions under which a provider of a travel service included in the package travel contract must pay compensation are restricted by international agreements binding on Liechtenstein, these restrictions shall also apply to the tour operator. The compensation to be paid by the tour operator cannot be contractually limited in advance.

5) The right to a price reduction or compensation under this Act shall not affect the rights of passengers under Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights (OJ L 46, 17.2.2004, p. 1), Regulation (EC) No 1371/2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14), Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131, 3.5.2009, p. 14), L 315, 3.12.2007, p. 14), Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131, 28.5.2009, p. 24), Regulation (EU) No 1177/2010 on the rights of passengers when travelling by sea and inland waterway (OJ L 334, 17.12.2009, p. 1), L 334, 17.12.2010, p. 1) and Regulation (EU) No. 181/2011 on the rights of passengers in bus and coach transport (OJ L 55, 28.2.2011, p. 1) as well as under international agreements. A passenger shall be entitled to make claims both under this Act and under the aforementioned EEA legislation as well as under international conventions. However, a claim for damages or price reduction granted under this Act shall be credited against the claim for damages or price reduction due under the aforementioned EEA legislation or international conventions and vice versa, in order to avoid enrichment of the traveler.

6) Agreements that provide for a limitation period of less than two years for the traveler's claims for price reduction or damages are invalid in any case.

#### Art. 14

##### *Possibility of contacting the travel agent*

The traveler may address messages, requests or complaints regarding the provision of the contracted travel services directly to the travel agent through whom he/she concluded the package travel contract. The travel agent

shall forward such messages, requests or complaints to the tour operator without delay. For the purpose of compliance with deadlines, a statement by the traveler regarding such messages, requests or complaints shall also be deemed to have been received by the tour operator upon receipt by the travel agent.

Art. 15

*Duty to assist*

1) The tour operator shall immediately provide reasonable assistance to a traveler in difficulty, including the case described in Article 12, paragraph 7, in particular by:

a) Providing appropriate information about health services,

Local authorities and consular assistance; and

b) Assist the traveler in establishing long distance communication links and finding alternate travel arrangements.

2) The tour operator may demand reasonable compensation for his assistance if the traveler has caused the difficulties himself intentionally or negligently. This compensation may not exceed the actual costs incurred by the organizer.

V. Associated travel services

Art. 16

*Information requirements*

1) Before the traveler is bound by a contract resulting in linked travel services (Art. 3 Para. 1 let. e), or his corresponding contract er-

If the customer is bound by the travel contract, the entrepreneur who arranges related travel services must inform him clearly, comprehensibly and unambiguously that:

a) the traveler cannot claim any rights that apply exclusively to package tours, and that each service provider is liable only for the contractual performance of its service; and

b) the traveler benefits from the insolvency protection under Art. 20 et seq.

2) For the fulfillment of his duty to provide information pursuant to paragraph 1, the entrepreneur shall use the relevant standard information sheet pursuant to Annex 2, provided that the specific type of related travel services is covered in one of these forms.

3) If the entrepreneur who mediates related travel services has not fulfilled the obligations set forth in paras.

1 and 2 as well as the requirements provided for in Art. 20 et seq. are not met, the rights and obligations under Art. 8 and 11 to 15 shall apply with respect to the travel services included in the associated travel services, provided that Liechtenstein law is applicable.

4) Paragraphs 1 to 3 also apply to entrepreneurs who are not established in an EEA member state, but who direct their activities for the mediation of related travel services to such a member state.

5) If linked travel services are the result of the conclusion of a contract between a traveler and an entrepreneur who does not mediate the linked travel services, this entrepreneur shall inform the entrepreneur who mediates the linked travel services about the conclusion of the relevant contract.

PRG

## VI. Supplementary provisions

### Art. 17

#### *Special obligations of the travel agent for tour operators established outside the EEA*

If the tour operator has its place of business outside the European Economic Area, its obligations under Chapter IV also apply to the travel agent if the latter is established in an EEA member state, unless the travel agent proves that the tour operator complies with these provisions.

### Art. 18

#### *Liability for booking errors*

A tour operator, a travel agent, an entrepreneur who arranges linked travel services and an entrepreneur who provides travel services shall each be liable for errors due to technical defects in the booking system which are attributable to them. If such an entrepreneur has agreed to arrange the booking of a package tour or travel services that are part of linked travel services, he shall also be liable for errors he makes during the booking process. However, an entrepreneur is not liable for booking errors attributable to the traveler or caused by unavoidable and extraordinary circumstances.

### Art. 19

#### *Recourse claims*

If the tour operator or, pursuant to Art. 17, the travel agent pays compensation, grants a price reduction or fulfills the other obligations arising from this Act, the tour operator's or travel agent's right of recourse against third parties who contributed to the event giving rise to the compensation, price reduction or other obligations shall be governed by the general principles of the law on compensation and warranty.

VII. Protection in the  
event of  
insolvency Art.  
20

*Insolvency protection*

1) Tour operators as well as intermediaries of connected travel services have to provide security to the following extent:

a) for the reimbursement of all payments made by or on behalf of travelers, if the services in question are not provided as a result of the insolvency of the tour operator; if the transportation of persons is included in the package tour contract, the tour operators shall also provide security for the return of the travelers; a continuation of the package tour may be offered;

b) for reimbursement of all payments received by intermediaries of connected travel services from travelers to the extent that a travel service which is part of connected travel services is not provided as a result of their insolvency; if such an intermediary is responsible for the transportation of persons, the security shall also cover the return transportation of the traveler.

2) The commencement of activities for which tour operators and intermediaries of related travel services are required to provide security within the scope of paragraph 1 shall be subject to the following conditions:

a) the existence of a trade license under the Trade Licensing Act;

b) prior registration in a register corresponding to Article 18 of Directive (EU) 2015/2302; the tour operators and travel service providers referred to in Articles 21 to 23 do not need to be registered in this register, unless Article 22 provides otherwise.

3) The Office of National Economy acts as the central contact point within the meaning of Article 18 of Directive (EU) 2015/2302; it is responsible for the tasks specified therein.

4) The Government shall regulate the details of the provision of security pursuant to subsection 1 and the register pursuant to subsection 2(b) by ordinance.

Art. 21

*Insolvency insurance of tour operators and intermediaries of linked travel services established in the EEA*

If a tour operator or an intermediary of connected travel services has its place of business in another EEA member state, it shall also satisfy its obligation to provide insolvency protection if it provides security to the traveler in accordance with the provisions of that other state implementing Articles 17 and 19(1) of Directive (EU) 2015/2302.

Art. 22

*Special obligations of the travel agent in the case of a tour operator established outside the EEA*

If the tour operator has its place of business outside the European Economic Area, the obligations of a tour operator pursuant to Art. 20 shall apply to the travel agent, unless the travel agent indicates

that the organizer complies with the provisions of Chapter V of Directive (EU) 2015/2302.

Art. 23

*Special obligations of the tour operator or connected tour operator established outside the EEA*

1) If the tour operator is not established in an EEA member state and concludes package travel contracts in Liechtenstein or offers to conclude package travel contracts in Liechtenstein or in any way directs such activity to Liechtenstein, it is obliged to provide security in accordance with Art. 20(1)(a).

2) If the intermediary of linked travel services is not established in an EEA member state and if it arranges linked travel services in Liechtenstein or if it offers the arrangement of linked travel services in Liechtenstein or if it directs such an activity to Liechtenstein in any way, it is obliged to provide security in accordance with Art. 20 (1) b).

VIII. Penal provisions

Art. 24

*Transgressions*

The Office of National Economy shall, unless the offence constitutes a criminal offence within the jurisdiction of the courts or is punishable under any other

Administrative penal provisions is punishable by a more severe penalty, for violation punishable by a fine of up to 50,000 francs, who:

- a) includes false information in the pre-contractual information required under Art. 5 paras. 1 to 3, Art. 7 para. 3 or Art. 16 paras. 1 and 4 or does not or not fully comply with the information obligations under Art. 5 paras. 1 to 3 or Art. 16 para. 5;
- b) violates any of the orders on the manner of providing information made in Art. 5, 6 par. 1, Art. 7 par. 3 and 4, Art. 10 par. 4 or Art. 16 par. 1, 2 and 4;
- c) fails to provide the traveler with a copy or confirmation of the contract in accordance with the requirements stipulated therein, contrary to article 7, paragraph 1;
- d) does not include all the information required by Art. 7 par. 2 or includes false information in a package travel contract;
- e) fails to provide the traveler with the required documents in accordance with Art. 7, Para. 5;
- f) does not inform about the costs of the transfer of the package travel contract according to Art. 8 par. 2;
- g) fails to provide the passenger with a receipt for the additional fees, charges and other costs in accordance with Article 8, paragraph 3;
- h) not informed of the change in the package travel contract in accordance with Art. 9 or 10;
- i) violates its reimbursement obligation under Art. 10 Para. 3 or Art. 11 Para. 4;
- k) fails to forward the traveler's messages, requests, or complaints under Article 14;
- l) fails to provide assistance to the passenger in accordance with Art. 15, para. 1;
- m) organizes package tours or arranges a related travel service without fulfilling the necessary requirements under Art. 20 et seq.

Art. 25

*Responsibility*

If criminal acts are committed in the business operations of a legal entity, a partnership or a sole proprietorship, the criminal provisions shall apply to the persons who acted or would have acted on their behalf.

However, the legal entity, partnership or sole proprietorship shall be jointly and severally liable for the fines and costs.

IX. Legal

remedies

Art. 26

*Complaint*

- 1) Appeals against decisions and orders of the Office of National Economy may be lodged with the Government within 14 days from the date of notification.
- 2) Decisions and orders of the Government may be appealed to the Government or to the Administrative Court within 14 days from the date of notification.
- 3) The provisions of the Act on the General Administration of the State shall apply to the procedure.

PRG

X. Transitional and final provisions Art. 27

*Transitional provisions*

- 1) This Act shall apply to contracts for package tours and related travel services concluded after the entry into force of this Act.
- 2) The provisions on insolvency insurance (Art. 20) shall apply for the first time three months after the entry into force of this Act; tour operators and intermediaries of associated travel services shall apply for re- gistration under Art. 20(2)(b) by that time.

Art. 28

*Entry into force*

Subject to the unused expiry of the referendum period, this Act shall enter into force on 1 February 2020, otherwise on the day following its promulgation.

## **XI. Products Liability Act**

from 12 November 1992

### **Art. 1**

#### *Principle*

- 1) The manufacturer shall be liable for the damage if a defective product results in
- a) a person is killed or injured;
  - b) an item is damaged or destroyed which, by its nature, is usually intended for private use or consumption and has been used by the injured party mainly for private purposes.
- 2) He is not liable for the damage to the defective product.

### **Art. 2**

#### *Manufacturer*

For the purposes of this Act, a manufacturer shall mean the manufacturer of the final product, of a basic material or of a partial product, as well as any person who holds himself out as a manufacturer by affixing his name, trademark or other distinguishing mark to the product.

### **Art. 3**

#### *Importer*

Any person who imports a product into the European Economic Area for the purpose of sale, lease, hire-purchase or any other form of distribution in the course of his business shall also be deemed to be a manufacturer within the meaning of this Act. Deviating provisions in international treaties are reserved.

### **Art. 4**

#### *Supplier*

- 1) If the manufacturer of the product cannot be determined, any supplier shall be deemed to be its manufacturer unless, within a reasonable period of time after having been requested to do so, it informs the injured party of the manufacturer or the person who supplied the product to it.
- 2) This also applies to an imported product if the importer cannot be determined in accordance with Art. 3, even if the name of the manufacturer is indicated.



is.

Art. 5

*Product*

1) Products within the meaning of this Act are:

a) any movable thing, even if it forms part of another movable thing or immovable thing, and

b) Electricity.

2) Retrieved

Art. 6

*Error*

1) A product is defective if it does not provide the safety that one is entitled to expect, taking into account all circumstances; in particular, the following must be taken into account:

a) the way it is presented to the audience,

b) the use that can reasonably be expected, and

c) the date on which it was placed on the market.

2) A product is not defective merely because an improved product has subsequently been placed on the market.

Art. 7

*Exceptions from liability*

1) The manufacturer is not liable if he proves that

a) he has not placed the product on the market;

b) according to the circumstances, it must be assumed that the defect which caused the damage was not yet present when he placed the product on the market;

c) he has not manufactured the product for sale or any other form of distribution with an economic purpose, nor has he manufactured or distributed it in the course of his professional activity;

d) the defect is due to the fact that the product complies with binding, sovereign regulations;

e) the defect could not have been detected according to the state of the art in science and technology at the time the product was placed on the market.

2) Furthermore, the manufacturer of a basic material or a partial product shall not be liable if he proves that the defect was caused by the design of the product into which the basic material or partial product was incorporated or by the instructions of the manufacturer of the product.

Art. 7a

*Joint and several liability*

If liability affects several parties, they shall be liable jointly and severally. Their liability shall not be reduced by the fact that others are also liable for compensation for the same damage under other provisions.

Art. 7b

*Liability reduction*

- 1) The liability of the manufacturer is not reduced if the damage was caused by a defect in the product and at the same time by the action of a third party.
- 2) If the injured party or someone for whose conduct he is responsible is at fault, § 1304 ABGB shall apply *mutatis mutandis*.

Art. 8

*Deductible for property damage*

- 1) The injured party must pay for property damage up to the amount of 900 Swiss francs himself.
- 2) If the deductible is changed in the law of the European Economic Area, the Government shall adjust the amount accordingly.

Art. 9

*Waiver of liability*

Agreements limiting or eliminating liability under this Act vis-à-vis the transferee shall be null and void.

Art. 10

*Limitation*

Claims under this Act shall become time-barred three years after the date on which the injured party became aware or should have become aware of the damage, the defect and the identity of the manufacturer.

Art. 11

*Forfeiture*

- 1) Claims under this Act shall be forfeited 10 years after the date on which the manufacturer placed the product that caused the damage on the market.
- 2) Forfeiture does not occur if legal proceedings are pending against the manufacturer.

Art. 12

*Relationship to other provisions*

- 1) Unless otherwise provided in this Act, the General Civil Code shall apply to the claims for compensation provided for therein.
- 2) Provisions of the General Civil Code and other regulations according to which damages are to be compensated to a greater extent or by other persons than under this Act shall remain unaffected.
- 3) This Act shall not apply to damage resulting from a nuclear incident to which international conventions ratified by the States of the European Economic Area are applicable.

PHG

Art. 13

*Transitional provision*

This Act applies only to products placed on the market after its entry into force.

Art. 14

*Entry into force*

This Act shall enter into force on November 1, 1994.

## **XII. Lawyers Act**

from 8 November 2013

### **I. General provisions Art. 1**

#### *Subject and purpose*

- 1) This Act regulates the admission to the profession of lawyer and the be-  
practice of law in Liechtenstein.
- 2) It serves in particular to implement:
  - a) of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (EEA Law Series: Annex VII 2.01);
  - b) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (EEA Law Series: Annex VII -2a.01);
  - c) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (EEA law: Annex VII 1.01);
  - d) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, on the  
Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

#### **Art. 2**

#### *Designations*

The designations of persons, professions and functions used in this Act shall apply to persons of the female and male genders.

### **II. Liechtenstein lawyer**

#### **A. Access to the profession of lawyer**

#### **Art. 3**

*Requirements for the practice of law*

- 1) The profession of lawyer may be exercised by anyone who fulfills the requirements of paragraph 2 and is registered in the list of Liechtenstein lawyers (list of lawyers).
- 2) Prerequisites according to para. 1 are:
  - a) Ability to act;
  - b) Trustworthiness;
  - c) Liechtenstein national citizenship or citizenship of another State party to the Agreement on the European Economic Area (EEA Treaty State) or of a State treated as such on the basis of an international treaty;
  - d) successful completion of the bar exam or aptitude test or exercise of three years of effective and regular activity pursuant to Art. 74 et seq;
  - e) in case of passing the bar exam, practical activity according to Art. 4 and completion of training according to Art. 5;
  - f) domestic registered office according to Art. 10; and
  - g) Conclusion of liability insurance in accordance with Art. 26.
- 3) The proofs of fulfillment of the requirements under Paragraph 2(a), (b) and (g) must not be older than three months at the time of their submission.
- 4) The documents according to Annex VII of Directive 2005/36/EC are equivalent to the proofs according to paragraph 2.

**Art. 4**

*Practical activity*

- 1) The practical activity required for practicing the profession of lawyer shall last for two years.
- 2) The practical activity consists in a legal professional activity and has to be done for:
  - a) twelve months with a Liechtenstein lawyer; and
  - b) six months at:
    1. a Liechtenstein court;
    2. of the Liechtenstein Public Prosecutor's Office;
    3. a Liechtenstein lawyer; or

4. an administrative authority of the country, provided that the legal professional activity is useful for the practice of the profession of law; and

c) the remaining duration:

1. a lawyer;

2. a court or prosecutor's office; or

3. an administrative authority or a company, provided that the legal professional activity is useful for the practice of the legal profession.

3) In the cases referred to in paragraph 2(c), professional legal activities completed in the country of origin shall be counted to the extent of no more than half of the time completed.

4) The practical activity can be counted at the earliest from the successful completion of the studies mentioned in Art. 5.

#### Art. 5

##### *Training certificate*

1) In order to practice as a lawyer, it is necessary to have completed a course of study in Austrian or Swiss law at a university

with a master's degree, licentiate, master's degree in law or an equivalent diploma.

2) Within the scope of the studies according to Paragraph 1, appropriate knowledge of the following areas of knowledge must be demonstrably acquired:

a) Austrian or Swiss civil law and civil procedure law;

b) Austrian or Swiss criminal law and criminal procedure law;

c) Austrian or Swiss constitutional law including fundamental and human rights and Austrian or Swiss administrative law including administrative procedural law.

3) If a law degree awarded by a university of an EEA member state is based on a course of study which does not include Austrian or Swiss law, it shall be equivalent to a degree pursuant to para. 1 if the skills imparted during the course of study correspond to those of a course of study pursuant to para. 1; the Liechtenstein Bar Association shall decide on the equivalence.

4) If there is any doubt as to the equivalence of a course of study within the meaning of Paragraph 3, the Bar may obtain an appropriate expert opinion at the applicant's expense.

Art. 6

*Bar exam*

- 1) Admission to the bar examination is granted to those who meet the requirements of Art. 3 Para. 2 Letters a, b, c and e.
- 2) The application for the bar exam can be made at the earliest one month before the completion of the practical activity prescribed in Art. 3 Para. 2 letter e. The Bar shall decide on admission.
- 3) The bar exam shall be taken before the Bar Examination Board. It determines the place and time of the examination.
- 4) The bar exam includes one written paper each in civil, criminal, administrative, and constitutional law and an oral exam in these and other areas of law important to the practice of law.
- 5) If the written bar exam is not passed, it can be repeated at the earliest after one year. If the second written examination is also failed, a final repetition can take place at the earliest after three years have elapsed since the first examination.
- 6) If the oral bar examination is not passed, it may be repeated at the next examination date. If the second oral examination is also failed, a second and final repetition of the entire bar examination may take place no earlier than three years after the first examination.
- 7) If the attorney examination is passed, the examination board issues a confirmation.
- 8) The government shall regulate the details by ordinance.

RAG

Art. 7

*Entry in the list of attorneys*

- 1) A person who proves that he/she meets the requirements of Article 3 shall be entered in the list of lawyers by the Bar Association upon request.
- 2) The Bar shall maintain the necessary inquiries and, if registration is to be denied, shall hear the applicant before doing so.

3) The applicant shall be issued a confirmation of the registration in the list of attorneys.

4) Any person who fulfills the requirements of Article 3(2)(a) to (e) for entry in the list of lawyers but who does not practice the profession of lawyer shall be entered in the list of Liechtenstein lawyers eligible for registration. The legal consequences associated with registration in the list of lawyers do not apply to the persons concerned until they take up the profession.

B. Rights and obligations Art. 8

*Scope of the right of representation*

1) The lawyer has the exclusive authority:

a) to provide professional legal advice; and

b) to professionally represent parties in all judicial and extrajudicial matters as well as in all public and private matters.

2) The attorney-at-law's right of representation extends to all courts and administrative authorities. Before all courts and administrative authorities, the reference to the power of attorney replaces its documentary evidence.

3) The statutory powers of legal agents, trustees and patent attorneys shall not be affected by the foregoing provisions.

Art. 9

*Job title*

Only those who are registered in the list of lawyers (Art. 7 Para. 1) are entitled to use the professional title of lawyer. Art. 61, 80 and 86 are reserved.

Art. 10

*Chancery Duty*

1) The lawyer is obliged to run a law office with its registered office in the country.

2) The office must actually and permanently fulfill the spatial, personnel and organizational requirements for the practice of the legal profession.

3) If the lawyer fails to comply with his obligation under paras. 1 and 2 despite being requested to do so, the Bar shall prohibit him from practicing law until he provides proof that he has complied with this obligation.



Art. 11

*Personal responsibility*

A lawyer is obliged to practice his profession independently, in his own name and on his own responsibility.

Art. 12

*Professional honor*

The lawyer is obliged to uphold the honor and reputation of the profession by being honest and honorable in his conduct.

Art. 13

*Incompatible occupations*

It is incompatible with the practice of the legal profession to engage in such occupations that are contrary to the reputation of the profession.

RAG

Art. 14

*Representative duties*

The attorney-at-law shall be obliged to carry out the assumed representations in accordance with the law and to represent the rights of his party against everyone in a faithful and conscientious manner. He shall be authorized to put forward without hesitation everything which he considers useful according to the law for the representation of his party, to use his means of attack and defense in any way which does not contradict his authority, his conscience and the law.

Art. 15

*Secrecy*

1) The lawyer shall be bound to secrecy with regard to the matters entrusted to him and the facts otherwise made known to him in his professional capacity, the secrecy of which is in the interest of his party. He shall have the right to such confidentiality in judicial and other official proceedings in accordance with the provisions of procedural law.

2) The lawyer's right to confidentiality may not be violated by judicial or other official measures, in particular by questioning the lawyer's assistants or by demanding the disclosure of documents, images or other information.

The prohibition shall not be circumvented by the seizure or confiscation of any media, sound or data carriers; this shall be without prejudice to any special regulations governing the demarcation of this prohibition.

3) The lawyer's right to confidentiality pursuant to paragraph 2 shall also extend to all correspondence between the lawyer and his party, irrespective of where and in whose custody such correspondence covered by the protection of professional secrecy is located.

4) If a lawyer performs activities that are subject to the Due Diligence Act, he shall provide the supervisory bodies and the FIU Unit, upon request, with all information and documents, hand over copies and provide information that they require to perform their duties.

Art. 16

*Reporting and information obligations*

1) The lawyer shall immediately notify the Bar in writing of any change in the requirements under Article 3(2).

2) Upon request, the Bar shall be provided with all information and documents as well as with all information required for the performance of its duties.

Art. 17

*Conflict of interest*

1) The lawyer is obliged to refuse to represent or even to give advice if he has represented the other party in the same or a related case. Likewise, he may not serve or give advice to both parties in the same case.

2) If the attorney has acted as a mediator, unilateral advice and representation of one of the parties in this or a related matter against other parties who have participated in the mediation shall not be permitted.

Art. 18

*Order fulfillment*

1) The lawyer is obliged to take care of the business entrusted to him as long as the assignment exists. He is responsible for non-performance.

2) The lawyer shall be entitled to terminate the representation of his party, in which case he shall continue to represent the party for 14 days from the date of service of the termination notice to the extent necessary to protect the party from legal disadvantages.

3) This obligation shall cease to apply if the party revokes the order.

Art. 19

*Documents and files*

- 1) If the representation has ceased, the lawyer shall be obliged to hand over to the party, upon request, the original documents and files belonging to him, but shall be entitled, if his representation costs have not been adjusted, to make and retain at the party's expense the copies of the documents to be handed over that are necessary to establish them.
- 2) The lawyer shall not be obliged to hand over to the party drafts of documents, letters of the party addressed to him and other files, as well as evidence of payments made and not yet reimbursed to him. However, he shall hand over copies thereof to the party at the latter's request and expense.
- 3) The obligation under paragraph 2 as well as the obligation to keep the files shall expire after ten years from the date when the representation ceased.
- 4) The files may be stored in writing, electronically or in a comparable manner if they can be made legible at any time. Files stored electronically or in a comparable manner shall have the same probative value as files that can be read without the use of aids.

RAG

Art. 20

*Power of attorney*

The lawyer shall not be obliged to return the power of attorney to the party; however, the latter shall be entitled to indicate the revocation of the power of attorney on the same.

Art. 21

*Substitution*

- 1) The lawyer is entitled to substitute another lawyer in case of incapacity under legal liability.
- 2) In cases of permanent prevention or prolonged absence, the substitution shall be notified to the Bar Association, which shall also notify the courts and administrative authorities.

Art. 22

*Substitution and representation authorized recipients*

- 1) If the involvement of a lawyer is required by law

the lawyer may also be represented before all courts and administrative authorities by an articulated clerk employed by him, who is entitled to substitution, under his responsibility (articled clerk entitled to substitution).

2) If the law does not require a lawyer to be present, the lawyer may be represented before all courts and administrative authorities by a trainee in his employ, who is not entitled to substitution, under his responsibility (trainee entitled to substitution).

3) The lawyer shall provide for comprehensive training of the trainee in accordance with the professional profile of the lawyer and shall use the trainee accordingly.

Art. 23

*Fee*

1) The attorney has the right of free agreement of a fee.

2) The fee shall be assessed according to the nature and extent of the efforts, the difficulty of the case and the amount in dispute.

3) The lawyer may not claim the disputed claim or the disputed object in whole or in part as a fee, nor may he have it assigned or attached.

Art. 24

*Deduction and settlement obligation*

The lawyer shall be entitled to deduct from the cash received by him on behalf of his party the sum of his expenses and his fee, insofar as they are not covered by advances received, but he shall be obliged to settle these immediately with his party.

Art. 25

*Lien on a claim for reimbursement of costs*

1) If costs are awarded or comparatively awarded to a party in proceedings before a court, administrative authority or arbitral tribunal, the lawyer who last represented the party shall have a lien on the party's claim for reimbursement of cash expenses and remuneration for representation in such proceedings.

2) The party shall not be entitled to offset its claim for reimbursement of costs against its other claims.

The lienor shall not be entitled to offset any claims or liabilities vis-à-vis anyone or to dispose of such claims or liabilities at the expense of the lienor.

3) The party obliged to pay the costs may effectively pay the costs to the party only in the event that the lawyer entitled to lien has expressly waived payment to him.

#### Art. 26

##### *Liability insurance*

1) Every lawyer is obliged to take out liability insurance to cover claims for damages against him arising from his professional activity. He shall maintain the insurance coverage for the duration of his professional activity and prove this to the Bar Association upon request.

2) If the Rechtsanwalt fails to comply with his obligation under Paragraph 1 despite being requested to do so, the Bar shall prohibit him from practicing as a Rechtsanwalt until he provides proof that he has complied with this obligation.

3) The minimum insurance amount shall be 1 million Swiss francs per year.

4) The insurance coverage of the liability insurance must provide for a subsequent liability of at least three years in cases of expiration or suspension of the authorization to practice the profession. The deductible may not exceed 10 % of the sum insured per claim.

5) The "Special Conditions" of the insurance contract must contain the following text: "The policyholder instructs the insurer to notify the Bar Association of the Principality of Liechtenstein of the suspension or cessation of insurance coverage."

#### Art. 27

##### *Advertising*

1) The lawyer may provide information about his services and his person, provided that the information is factually correct, directly related to the profession and justified by an interest of the person seeking legal assistance. He may not emphasize his services or his person in an advertising manner.

2) The lawyer may neither cause nor tolerate third parties to engage in advertising on his behalf which he himself is prohibited from doing.

C. Legal assistance and defense Art. 28

*Appointment of a lawyer*

- 1) If the court has decided to appoint a lawyer or if the granting of legal aid includes such appointment, the party shall be entitled to the appointment of a lawyer by the Bar Association.
- 2) The Board of the Bar shall proceed according to fixed rules when making appointments; these rules shall ensure that the lawyers belonging to the Bar are called upon and burdened as evenly as possible.

Art. 29

*Acceptance of the mandate and reasons for refusal*

- 1) The lawyer appointed in accordance with Art. 28 shall represent or defend the party in accordance with the order appointing him and shall do so with the same care as a freely chosen lawyer.
- 2) He has the right to refuse to accept the mandate for important reasons or to demand early dismissal as a lawyer appointed pursuant to Art. 28. Important reasons are in particular:
  - a) Conflict of Interest;
  - b) profound disruption of the relationship of trust, if this is asserted by both the party and the appointed attorney.
- 3) The Bar Council shall decide on the existence of an important reason pursuant to paragraph 2.

Art. 30

*Remuneration claim against the party*

- 1) The lawyer appointed in accordance with Art. 28 shall be entitled to remuneration from the party he represents or defends only to the extent that the unsuccessful party incurs costs.
- 2) The party shall not be permitted to waive or otherwise dispose of or set off a claim for reimbursement of costs under para. 1. In all other respects, Art. 25 shall apply *mutatis mutandis*.

Art. 31

*Remuneration claim against the country*

- 1) The lawyer appointed pursuant to Art. 28, who would otherwise have no claim to remuneration under procedural law, shall be liable to the State for his services, provided that the services were rendered for the purpose of prosecuting the case.

The Client shall be entitled to a remuneration in accordance with the applicable provisions of the Lawyer's Tariff, with the following exceptions:

a) up to an amount in dispute of 50,000 Swiss francs, the full costs shall be reimbursed in accordance with the applicable tariff;

b) if the amount in dispute exceeds 50,000 Swiss francs, the full costs corresponding to the amount in dispute of 50,000 Swiss francs shall be reimbursed in accordance with the applicable tariff, as well as the costs reduced by 40% for the amount in dispute exceeding 50,000 Swiss francs. If the amount in dispute exceeds 300,000 Swiss francs, the calculation of the remuneration claim shall be based on an amount in dispute of 300,000 Swiss francs;

c) in the case of matrimonial, partnership and family law proceedings, including the provisional proceedings connected therewith and any associated claims of a pecuniary nature, the calculation of the remuneration or compensation claim shall be based on an assessment basis of a maximum of 50,000 Swiss francs;

d) in criminal proceedings are remunerated:

1. for charges:

aa) for infractions: 150 francs; bb) for misdemeanors: 375 francs;

cc) for crimes: 750 francs;

2. for requests for evidence and for all other submissions, as far as they do not fall under No. 3 or under tariff item 1 of the tariff legislation for attorneys and legal agents, the remuneration determined in No. 1, however, as far as very short submissions are concerned, half;

3.

aa) for appeal applications: one quarter of the fee set in item 1;

bb) for appeals, with the exception of appeals on costs, for appeals, for applications for reinstatement and for applications for reopening: twice the remuneration fixed in item 1;

cc) for statements on appeal and for statements on appeal as well as counterstatements thereto: three times the remuneration stipulated in item 1;

dd) for appeals on costs: the remuneration set in tariff item 2 of the Tariff Act for Lawyers and Legal Agents, but never more than the remuneration set for lawsuits; the value of the object shall be calculated in accordance with Art. 12 of the Tariff Act for Lawyers and Legal Agents;

4. for main hearings or for participation in a court appearance or in any other taking of evidence outside the main hearing, as well as in a court seizure: for the first half hour and for each further half hour, even if only begun, one times the remuneration set for prosecutions and from the sixth half hour, even if only begun, half the remuneration set for prosecutions;

5. for hearings of second instance: for the first half hour twice the amount, for each further half hour, even if only begun, one times the amount of the remuneration set for prosecutions, and from the sixth half hour, even if only begun, half the amount of the remuneration set for prosecutions;

6. for the representation of private parties and victims who have been granted legal aid: half of the remuneration according to items 1 to 5.

2) The claim for remuneration must also be accompanied by a claim for reimbursement of necessary cash expenses. Internal cash expenses, in particular copying costs, postage and telephone charges, are included in the standard rate and shall not be reimbursed separately. Necessary external cash expenses, in particular fees for excerpts from the land register or commercial register, photocopies at the court and translation costs, shall be reimbursed separately; these cash expenses shall be listed individually in the cost note and proven accordingly.

3) In civil and criminal cases, the trial court of first instance shall decide on the amount of the remuneration and the reimbursement of cash expenses. The billing period shall run from October 1 to September 30 of the following year. Interim settlements are permissible in justified cases. The application for the determination of costs for an accounting period shall be submitted no later than four weeks after the end of the accounting period, unless the claim is forfeited. The decision on the determination of costs shall not be binding on the party enjoying legal aid or the accused. The respective rules of procedure shall apply to the cost determination procedure.

4) In proceedings before the State Court, the latter shall decide on the amount of remuneration and reimbursement of cash expenses. The accounting period lasts from

October 1 to September 30 of the following year. Interim settlements are permissible in justified cases. The application for a cost determination for a settlement period is, in case of other

The costs decision shall not be binding on the party enjoying the procedural assistance. The decision on the determination of costs shall not be binding on the party enjoying procedural assistance.

5) Paragraphs 1 to 4 shall apply *mutatis mutandis* to the remuneration of the services of the official representative, insofar as his entitlement to remuneration vis-à-vis the company represented by him is limited.



person proves to be irrecoverable in whole or in part. The claim shall be deemed irrecoverable if, according to the circumstances to be expected, success in the compulsory enforcement proceedings is not to be expected.

6) In administrative proceedings which cannot be brought before the ordinary courts, the lawyer appointed pursuant to Article 28 shall be entitled to remuneration from the Bar in accordance with paragraph 1. The amount of the remuneration and the reimbursement of cash expenses shall be decided by the Board of the Bar. The accounting period shall run from October 1 to September 30 of the following year. Interim settlements are permissible in justified cases. The application for the determination of costs for an accounting period must be submitted no later than four weeks after the end of the accounting period if the claim is otherwise forfeited. The decision on the determination of costs shall not be binding on the party enjoying legal aid. The Land shall grant the corresponding advances to the Bar to cover these claims for remuneration. The Bar shall prepare an annual statement of account.

RAG

#### D. Law firms

##### Art. 32

###### *Purpose*

1) Attorneys-at-law may join forces with other attorneys-at-law in order to jointly practice their profession in a law society, provided that the purpose of the society is limited to providing professional legal advice and representing parties in legal matters, including the necessary auxiliary activities and the administration of the society's assets.

2) Unless otherwise provided below, the provisions of this Act concerning lawyers shall apply mutatis mutandis to law firms.

##### Art. 33

###### *Legal form and company*

1) The legal forms open to the partners for the merger are the simple partnership, the general partnership, the limited partnership, the joint stock company and the limited liability company. Law firms in the form of a joint-stock company may only issue registered shares.

2) The existence as a law firm must be made visible to the outside world by appropriate measures. The firm must, in addition to the reference to the

The name of the company must contain the surname of at least one partner of the law firm. Additional designations as well as names of other persons who are not partners of the law firm may not be included in the firm name. If a partner leaves the law firm, his name may be continued in the firm name with his consent.

3) The participation of law firms in other law firms as well as the merger of several law firms into one group is not permitted.

Art. 34

*Entry in the list of law companies*

1) Law firms shall be registered with the Bar Association for entry in the list of law firms. Art. 7 paras. 2 and 3 shall apply *mutatis mutandis*.

2) The Bar Association shall verify the compliance of the partnership agreements, articles of association and other agreements between the partners with the legal requirements and shall refuse registration in the List of Law Societies if these requirements are not met.

3) Insofar as the registration in the Commercial Register is required to obtain the personality of the law society, the documents required for the registration and the documents required under this Act shall be submitted to the Bar Association prior to the registration. The Bar Association shall issue a certificate to the Office of Justice stating that the legal requirements have been met and that the company will be entered in the list of law companies after registration in the Commercial Register.

registered in the commercial register. Without this certificate, the company may not be entered in the Commercial Register.

4) The law company shall be registered in the list of law companies if it is proved that:

a) the company meets the requirements of Articles 32 to 36; and

b) the Company is not in liquidation and no insolvency proceedings are pending against its assets.

5) Registered law companies shall notify the Bar of any changes in the documents to be submitted in the registration procedure and the

composition of the partners. If these changes are in conflict with the legal requirements, the company shall be removed from the list of law companies after prior consultation if it does not restore the legal status within a period set by the Bar Association.

Art. 35

*Liability insurance*

1) The Law Society is obliged to prove that it has taken out a liability insurance policy which covers the Law Society and all the lawyers working in it and whose coverage corresponds to the nature and extent of the risks associated with the activities of the Society.

2) The sum insured is:

a) in the case of a simple partnership, a general partnership and a limited partnership, at least 1 million Swiss francs per partner. If such a partnership has more than five partners, the sum insured shall be at least 5 million Swiss francs;

b) in the case of association members, at least 5 million Swiss francs.

3) In all other respects, Art. 26 par. 2, 4 and 5 shall apply *mutatis mutandis*.

Art. 36

*Shareholder*

1) Only attorneys-at-law who are registered in the list of attorneys-at-law can be partners of a law firm.

2) Company shares, stock or capital contributions may not be held for the account of third parties and third parties may not participate in the profits of the law firm.

3) Shareholders may only authorize shareholders to exercise shareholder rights.

4) The partners may only be members of a law firm in order to practice law.

Art. 37

*Management*

If the management or administration is transferred to a third party, the third party must be a lawyer and registered in the list of lawyers.

Art. 38

*Representation of the law firm*

- 1) Within the framework of the management of a mandate, each lawyer must be authorized to represent the law firm or all partners alone.
- 2) If a law firm with legal capacity represents parties before courts or administrative authorities within the scope of professional representation, its representative must be registered as a lawyer in the list of lawyers.
- 3) Article 42 shall apply mutatis mutandis to the representation of the law firm by lawyers in the employment relationship, and Article 43 shall apply mutatis mutandis to the representation of the law firm by trainees.

Art. 39

*Independence of professional practice*

- 1) The partners of the law firm and the law firm shall ensure that the lawyers working in the law firm can exercise their profession independently, insofar as they handle a particular mandate in sole responsibility.
- 2) The right of shareholders to issue instructions to employees of the company who are themselves lawyers and are called in as assistants in the conduct of a mandate is reserved.
- 3) General agreements between the partners on the practice of law in the company, namely those on a certain business policy and the related acceptance or rejection of certain mandates, are permissible.

Art. 40

*Professional and ethical obligations*

- 1) Attorneys-at-law who are members of a law society shall remain responsible for the fulfillment of their professional and ethical duties under disciplinary law.
- 2) The disciplinary responsibility for the fulfillment of professional and ethical duties cannot be limited or waived by the articles of association, by resolutions of the shareholders or the management, or by management measures.

Art. 41

*Liquidation*

Only one lawyer may be appointed as the liquidator of a law firm.

who is registered in the list of attorneys.

E. Lawyers in an employment relationship Art. 42

*Employment relationship and professional duties*

1) Lawyers may enter into an employment relationship, the subject matter of which also includes activities that are part of the lawyer's authorized tasks, only with a lawyer or a law firm.

2) The personal responsibility of a lawyer in the employment relationship shall be preserved in accordance with the provisions of Art. 11.

3) The rights and duties of lawyers under professional and ethical law also apply to lawyers in an employment relationship. They are liable to disciplinary action for the fulfillment of their professional duties.

This responsibility can neither be limited nor waived.

4) Within the scope of conducting a mandate, each lawyer in the employment relationship shall be entitled to represent only the serving lawyer or the serving law firm in accordance with Art. 8.

F. Concepts

Art. 43

*Principle*

1) A person may act as a trainee within the meaning of Art. 22 if he fulfills the requirements of Para. 2 and is entered in the list of trainees. Art. 7 paras. 1 to 3 shall apply *mutatis mutandis*.

2) Prerequisites according to para. 1 are:

a) for the substitution-entitled recipient:

1. successful completion of the Liechtenstein bar examination or an equivalent foreign bar examination; or

2. the fulfillment of the requirements according to Art. 3 Para. 2 Letters a and b and Art. 5 as well as the exercise of a practical activity of at least twelve months with a Liechtenstein lawyer or a Liechtenstein court;

b) for the authorized representative the fulfillment of the requirements according to Art. 3 para. 2 letters a and b and Art. 5.

3) The scope and the extent of the right of representation of the recipient are based on the

according to Art. 8 and 22.

4) The Bar shall issue certificates of legitimacy to the trainees in use by a lawyer, which shall indicate the right of substitution or the power of representation.

Art. 44

*Professional rights and obligations*

The trainees are subject to the provisions on the professional rights and duties of lawyers, insofar as they are applicable to them.

Art. 45

*Disciplinary*

Disciplinary authority over the trainees shall be exercised by the Disciplinary Court in accordance with the provisions of Art. 46 et seq.

G. Disciplinary law

1. General

Art. 46

*Disciplinary offense*

1) A lawyer who culpably violates the duties of his profession or damages the honor or reputation of the profession by his professional conduct commits a disciplinary offense.

2) A lawyer commits a disciplinary offense through extra-professional conduct if it is likely to significantly impair his trustworthiness.

Art. 47

*Limitation*

1) The statute of limitations precludes prosecution of the attorney for a disciplinary offense if:

a) no disciplinary proceedings have been instituted within one year from the date on which the higher court became aware of the facts on which a disciplinary offense was based, or disciplinary proceedings which have been finally terminated have not been reopened to his detriment;

b) no final decision has been rendered within five years of the termination of disciplinary conduct.

2) The running of the time limits specified in paragraph 1 shall be suspended if, on account of the

disciplinary offense is pending or preliminary criminal investigations are being conducted, for the duration of these proceedings.

3) If a disciplinary offense also constitutes a judicially punishable act and if the period of limitation under criminal law is longer than the period specified in subsection 1(b), the period of limitation under criminal law shall take its place.

4) If the lawyer commits a similar disciplinary offense again within the limitation period, the limitation period under subsection 1 shall not occur until the limitation period for this disciplinary offense has also expired.

#### Art. 48

##### *Disciplinary sanctions*

1) The disciplinary sanctions to be applied are:

- a) written reprimand;
- b) Fines up to the amount of 50 000 francs;
- c) Disbarment from practicing law for a period of one year;
- d) Removal from the list of attorneys.

2) The disciplinary sanction of disqualification from practicing as a lawyer may be conditionally suspended in whole or in part, subject to a probationary period of not less than one year and not more than three years, if it can be assumed that the threat thereof will be sufficient to deter the accused from committing further disciplinary offenses.

3) In addition to the unconditional or fully conditional disciplinary sanction of disbarment, a fine may also be imposed.

4) A prohibition on the employment of trainees may be imposed as a secondary penalty, taking into account the nature of the disciplinary offense.

5) When imposing the disciplinary penalty, particular consideration shall be given to the magnitude of the offense and the resulting disadvantages, especially for the population seeking justice, and also to the income and financial situation when assessing the fine.

2. Competence Art. 49

##### *Disciplinary Tribunal*

- 1) Disciplinary authority over lawyers is exercised by the Supreme Court as a disciplinary court.
- 2) The disciplinary court may delegate the conduct of the disciplinary investigation to a legally qualified judge as an investigating judge.
- 3) Article 44 of the Judges Service Act shall apply mutatis mutandis to the appointment of the investigating judge.
3. Disciplinary proceedings Art. 50

*Principle*

- 1) Disciplinary proceedings against lawyers shall be opened ex officio or upon complaint.
- 2) The criminal authorities shall, upon initiation of criminal proceedings against a lawyer for a felony or a misdemeanor, immediately notify the disciplinary court.
- 3) A disciplinary offense shall not be prosecuted if the lawyer's fault is minor and his or her conduct has resulted in no or insignificant consequences.
- 4) Sections 305 and 306(1) of the Code of Criminal Procedure shall apply mutatis mutandis to the reimbursement of costs.
- 5) In disciplinary proceedings against lawyers, only the disciplinary defendant and the Bar Association shall be parties with the right to file motions and complaints.

Art. 51

*Disciplinary investigation*

- 1) The disciplinary investigation may be initiated only by a decision of the disciplinary court (initiation decision).
- 2) In the decision to initiate proceedings, the points of accusation shall be specifically designated.
- 3) In the disciplinary investigation, the accusation of a breach of duty made against the disciplinary accused shall be examined and the facts of the case shall be clarified to the extent necessary to be able to discontinue the disciplinary proceedings or to refer the case for oral proceedings.
- 4) If the facts of the case have been sufficiently clarified, the disciplinary tribunal may refuse to initiate the disciplinary investigation or may, after agreement, order the initiation of the investigation.



The court of first instance may decide to immediately refer the case for oral proceedings instead of initiating the disciplinary investigation (referral decision).

5) The decision to initiate the disciplinary investigation or to immediately refer the case for oral proceedings shall constitute the initiation of the disciplinary proceedings.

6) No ordinary appeal is permitted against resolutions under paras. 1 and 4. Art.

52

*Interrogations and establishment of the facts*

1) If it has been decided to open the disciplinary investigation, the files shall be forwarded to the investigating judge.

2) The investigating judge shall hear the disciplinary accused and, if necessary, witnesses and experts, and shall investigate ex officio all circumstances necessary to fully clarify the facts of the case. The disciplinary accused's refusal to comply with a summons or to comment on the points of accusation shall have no effect on the proceedings.

3) The provisions of the Code of Criminal Procedure shall apply to the questioning of the disciplinary defendant, witnesses and experts.

Art. 53

*Inspection of files and completion of the disciplinary investigation*

1) The investigating judge shall grant the disciplinary defendant and his defense counsel access to files in accordance with the provisions of the Code of Criminal Procedure.

2) If the disciplinary defendant requests that the disciplinary investigation be supplemented, the investigating judge shall do so. If the investigating judge has reservations about granting such a request, he shall obtain the decision of the disciplinary court.

3) The disciplinary court may ex officio order the completion of the disciplinary investigation.

4) After the disciplinary investigation has been completed or supplemented, the investigating judge shall forward the files to the disciplinary court.

Art. 54

*Discontinuation and referral order*

- 1) If the disciplinary court considers that there is no reason to continue the disciplinary proceedings, it shall discontinue the proceedings by resolution.
- 2) In the opposite case, the disciplinary court shall decide to refer the case for oral proceedings (referral decision).
- 3) The order of referral shall specify the points of accusation.
- 4) The decisions under paras. 1 and 2 shall be served on the disciplinary defendant.
- 5) No ordinary appeal shall be admissible against the referral decision under para. 2.

Art. 55

*Oral hearing*

- 1) The disciplinary defendant, his defense counsel and the Bar Association shall be summoned to the hearing.
- 2) The conduct of the hearing shall be governed by the provisions of the Section 14 of the Code of Criminal Procedure mutatis mutandis.
- 3) The oral proceedings shall begin with the reading of the order of referral.

Art. 56

*Content and pronouncement of the decision*

- 1) The disciplinary tribunal shall either acquit the accused of the offense with which he is charged or declare him guilty. If a guilty verdict is reached and a disciplinary penalty imposed, the verdict shall also contain the pronouncement on the disciplinary penalty.
  - 2) The decision, including the reasons for the decision, shall be pronounced immediately after the conclusion of the oral proceedings and shall be served on the defendant within two weeks.
4. Interim measures Art. 57

*Interim measures*

- 1) The disciplinary court may order provisional measures against a lawyer if
  - a) the attorney has been convicted of a felony or misdemeanor by a court of law, or

b) the disciplinary sanction of removal from the list of lawyers has been pronounced, or

c) criminal proceedings have been opened against the lawyer in connection with his professional activity

and the provisional measure is necessary in view of the nature and gravity of the disciplinary offense with which the Rechtsanwalt is charged because of the serious disadvantages that are to be feared, in particular for the interests of the population seeking justice or for the reputation of the profession.

2) Before a decision on a provisional measure is taken, the lawyer concerned and the Bar Association must be given the opportunity to comment.

3) Interim measures are in particular:

a) supervision of the management of the law firm by the Board of Directors of the Bar Association;

b) deprivation of the right of representation before certain or all courts or administrative authorities;

c) the temporary ban on the employment of trainees;

d) in the cases referred to in subparagraphs (1)(a) and (b), temporary disqualification from practicing as a lawyer.

4) Interim measures shall be revoked, amended or replaced by another if it becomes apparent that the conditions for the order do not or no longer exist or that the circumstances have changed significantly.

5) Interim measures shall cease to have effect upon the legally binding termination of the disciplinary proceedings.

H. Termination and Suspension of the Right to Practise Law Art. 58

*Expiry and rest*

1) The authorization to practice law expires by:

a) Death;

b) Loss of the ability to act;

c) legally enforceable opening of bankruptcy proceedings until its legally enforceable termination and the legally enforceable non-opening of insolvency proceedings due to a lack of cost-covering assets;

d) Loss of citizenship under Art. 3(2)(c);

- e) Waiver;
- f) Disciplinary finding;
- g) a supervisory measure pursuant to Art. 28 para. 1 let. i of the Due Diligence Act.
- 2) The authorization to practice law is suspended:
  - a) in the case of disqualification from practicing law in the course of disciplinary proceedings; or
  - b) by prohibition of the practice of the profession due to lack of maintenance of the domestic office or liability insurance;
  - c) by a supervisory measure pursuant to Art. 28 para. 1 let. h of the Due Diligence Act.
- 2a) The right to manage and represent a law firm shall be suspended by a supervisory measure pursuant to Art. 28 par. 1 letter k of the Due Diligence Act.
- 3) In the cases referred to in paras. 1 to 2a, a temporary substitute shall be appointed for the lawyer. This temporary substitute shall also be appointed in the event of the lawyer's illness or absence for the duration of the lawyer's absence, if the lawyer has not himself named or been unable to name a substitute pursuant to Article 21; in this case, the temporary substitute shall have the status of a substitute pursuant to Article 21.
- 21. The temporary deputy shall be appointed by the Bar.
- 4) In the cases referred to in paragraph 1, a person shall be removed from the list of attorneys upon application or ex officio. If all legal requirements are fulfilled, re-registration in the list of lawyers is possible.
- 5) In the cases referred to in paras. 2 and 2a, the lawyer shall remain registered in the list of lawyers and thus continue to be a member of the Bar; however, he shall be temporarily prohibited from practicing the profession.

### III. Establishment of lawyers from the European Economic Area

#### A. Establishment under the professional title of the home state Art. 59

##### *Principle*

- 1) Nationals of a State party to the EEAA who are entitled to practice law in their State of origin under one of the professional titles listed in the Annex to this Act may establish themselves in Germany in order to practice as a lawyer if, upon application, they are entered on the list of

of established European lawyers (established European lawyers).

2) In addition to the rules of professional conduct applicable in the country of origin, the established European lawyer is subject to the same rules of professional conduct and ethics as domestic lawyers with regard to all activities he performs in the country.

3) Nationals of other states may also establish themselves in Austria within the meaning of paras. 1 and 2 for the purpose of practicing as a lawyer, provided that a corresponding interstate treaty agreement has been concluded with these states. Art. 65 is excluded from this.

#### Art. 60

##### *Entry in the list of established European lawyers*

1) The Bar Association shall decide on the application for registration in the list of established European lawyers. The applicant must provide the following evidence:

a) a certificate issued by the competent authority in the home country confirming membership of the profession. The Bar may require that the certificate is not older than three months at the time of its presentation;

b) about the fulfillment of the requirements according to Art. 3 Para. 2 Letters a to c, f and g.

2) The application and the documents to be enclosed must be submitted in German if they originate from the applicant. The other documents must be submitted with an officially certified translation if they are not in German.

3) The Bar shall maintain the necessary inquiries and, if registration is to be denied, shall hear the applicant before doing so.

4) A confirmation of the registration shall be issued to the applicant. Art. 61

##### *Job title*

1) Whoever is entered in the list of established European lawyers and pursues the activity of a lawyer in Austria shall use the professional title which he is entitled to use in the home country according to the law applicable there in the language or one of the languages of the home country. Furthermore, he shall indicate the professional organization to which he belongs in the home country or the court to which he is admitted according to the regulations of the home country, as well as the home country.

2) The term "European lawyer" used in this Law may not be used as a professional title or in advertising (Art. 27).

Art. 62

*Occupational status*

1) The established European lawyer is authorized to perform the same professional activities as the lawyer registered in the list of lawyers, unless different provisions apply.

2) The established European lawyer has the status of a lawyer registered in the list of lawyers. However, he is not authorized:

- a) to be elected to a body of the Bar;
- b) To train conceptual designers;
- c) to be appointed as a legal aid lawyer, legal aid defender or public defender.

Art. 63

*Consent Attorney*

1) In proceedings in which the party must be represented by a lawyer or must be assisted by a defense lawyer, the established European lawyer may act as a representative or defense lawyer of a party only in agreement with a lawyer entered in the list of lawyers (agreement lawyer). It is the responsibility of the latter to ensure that the established European lawyer observes the requirements of the proper administration of justice when representing or defending a party. No contractual relationship shall be established between the lawyer by agreement and the party, unless the parties have agreed otherwise.

2) The consent shall be proved in writing to the court or administrative authority at the first procedural act. The court or the administrative authority shall be notified in writing of the revocation of the consent. It shall be effective only for the future. Procedural acts for which the proof of consent is not available at the time of their performance shall be deemed not to have been performed by a lawyer. Both the establishment and any revocation of the consent shall be notified in writing by the consenting lawyer to the Bar.

Art. 64

*Supervision and disciplinary authority*

- 1) The established European lawyer is subject to the supervision of the Bar (Art. 91 ff.) and to the disciplinary authority of the Supreme Court (Art. 46 ff.).
- 2) Prior to the initiation of disciplinary proceedings, the competent authority of the State of origin shall be notified, giving all relevant details, and shall be informed of the progress of the proceedings. The competent bodies shall cooperate during the disciplinary proceedings. In the appeal proceedings, the competent authority of the home state shall be given the opportunity to comment.
- 3) The suspension or expiration of the authorization to practice in the home country directly entails the temporary or permanent prohibition for the person concerned to practice as an established European lawyer in Germany.

Art. 65

*Law firm in the state of origin*

- 1) If established European lawyers belong to an association for the joint practice of their profession in their home country, they must notify the Bar of this. They shall indicate the name of the association and its legal form. The Bar may require them to provide further relevant information on the association concerned.
- 2) Established European lawyers may use the designation of an association for the joint practice of the profession to which they belong in their home country in legal transactions and may also practice the legal profession within the framework of a branch of this association. This is subject to the application, mutatis mutandis, of the provisions on law societies according to Art. 32 et seq. of the Swiss Code of Obligations.

Art. 66

*Expiration or suspension of the authorization*

Article 58 shall apply mutatis mutandis to the termination or suspension of the right to practice as an established European lawyer.

Art. 67

*Cooperation with the competent bodies in other states*

- 1) The competent domestic agencies shall cooperate with the competent agencies of the

States of origin shall cooperate closely. They shall provide administrative assistance, on the principle of reciprocity and after ensuring the confidentiality of the information exchanged, in order to facilitate the application of the provisions of this Law and of Directive 98/5/EC and to avoid that the provisions are misused, if necessary, in order to circumvent them.

2) In particular, the Bar shall inform the competent authority in the home country about entries in and deletions from the list of never- practiced European lawyers.

B. Integration after passing the qualifying examination or after three years of employment

1. Integration through proficiency testing Art. 68

*Requirements*

1) Nationals of an EEA Contracting State who have obtained a diploma attesting that the holder possesses the professional qualifications required for direct access to a profession listed in the Annex to this Act shall, upon request, be entered on the list of lawyers if they have successfully passed the qualifying examination.

2) A diploma awarded on the basis of education and training that did not predominantly take place in the EEA shall entitle the holder to establishment within the meaning of subsection 1 if:

a) the holder has actually and lawfully practiced a profession listed in the Annex to this Act for at least three years; and

b) the EWRA Contracting State which recognized the diploma certifies the practice of the profession as defined in subparagraph (a).

3) Nationals of other states shall also be entered on the list of lawyers upon application in accordance with paras. 1 and 2 if they have successfully passed the qualifying examination and a corresponding international agreement has been concluded with these states.

Art. 69

*Suitability test*

1) The aptitude test is a state examination exclusively concerning the professional knowledge of the applicant, which is intended to assess his/her ability to perform the activities of a lawyer in the country.

2) The aptitude test must take into account the fact that the applicant has a professional qualification to practice law in an EWRA Contracting State.



Art. 70

*Admission to the qualifying examination*

- 1) The Bar Association decides on admission to the qualifying examination.
- 2) Admission to the proficiency test shall be refused if the applicant does not meet the legal requirements or does not submit or fails to submit the necessary documents and declarations.

Art. 71

*Examination subjects and contents*

- 1) Examination subjects are the compulsory subject of civil law, two elective subjects and the professional law of lawyers. The applicant determines one elective subject from each of the two elective subject groups:
  - a) Administrative Law or Constitutional Law;
  - b) areas of civil law not covered by the compulsory subject, administrative law or criminal law.
- 2) The applicant may not vote for the same elective in both elective groups.
- 3) The examination covers the areas of the compulsory subject and the two elective subjects to be defined in more detail by ordinance, as well as the associated procedural law, including the main features of court constitutional law, compulsory enforcement law and insolvency law.

Art. 72

*Written and oral examination*

- 1) The aptitude test consists of a written and an oral part. It is taken in German.
- 2) The written examination consists of two papers. One paper relates to the compulsory subject, the other to the elective subject determined by the applicant.
- 3) The applicant will be admitted to the oral examination only if both written papers meet the requirements; otherwise, the examination will be considered failed.
- 4) The oral examination covers the professional law of lawyers and the elective subject in which the applicant has not written a paper.

Art. 73

*Performance and assessment of the proficiency test*

- 1) The Examination Board for Lawyers is responsible for taking the qualifying examination.
  - 2) The examination board decides on the basis of the overall impression of the performance in the written and oral examination whether the applicant has the knowledge required under Art. 69.
  - 3) Art. 6 par. 2 and 5 to 7 as well as Art. 96 shall apply *mutatis mutandis* to the performance of the proficiency test.
2. Integration after three years of activity Art. 74

*Requirements*

- 1) Any person who can prove that he has been effectively and regularly practicing as an established European lawyer in Liechtenstein for at least three years in the field of Liechtenstein law, including EEA or Community law, in accordance with Article 75, shall be entered on the list of lawyers upon application.
- 2) Effective and regular activity is the actual exercise of the profession without interruption. The activity must be performed independently.
- 3) Interruptions due to events of daily life are not taken into account. Interruptions up to a duration of three weeks are generally interruptions of daily life.
- 4) When assessing the interruption within the meaning of paragraph 3, all circumstances of the individual case shall be taken into account and the reason, duration and frequency of the interruption shall be considered.

Art. 75

*Proof of three years of effective and regular activity*

- 1) The applicant shall address his application for entry in the list of lawyers to the Bar Association and shall enclose all relevant information and documents. He shall provide evidence of the number and type of cases he has handled in Liechtenstein law, as well as the duration of his practice.
- 2) In order to provide evidence of the legal cases handled under Liechtenstein law, the applicant shall submit case lists which must contain information on the file number, subject matter, period of time, type and scope of activity as well as the state of affairs. In addition, anonymized samples of work must be submitted.
- 3) The Bar Association forwards the submitted documents to the Bar Examination Commission. This decides on the proof of the

three years of effective and regular activity in Liechtenstein law.

4) The applicant may be asked by the examination board to explain his information and documents orally or in writing and to submit further written documents and records to clarify and specify the required evidence.

5) Art. 60 par. 2 shall apply mutatis mutandis to the information and documents provided by the applicant.

3. Incorporation in case of shorter activity under Liechtenstein law Art. 76

*Principle*

1) Anyone who has effectively and regularly practiced as an established European lawyer in Liechtenstein for at least three years, but who has not practiced Liechtenstein law during the entire period, will be

registered in the list of attorneys upon application, if he/she provides the evidence pursuant to paras. 2 and 3.

2) The applicant shall provide the evidence pursuant to Art. 75(2). In addition, he shall provide all information and submit all documents suitable as evidence of his knowledge and professional experience in Liechtenstein law.

3) In making its decision, the Examining Board for Lawyers shall take into account the nature and scope of the professional activity as well as all knowledge and professional experience in Liechtenstein law, furthermore the participation in courses and seminars on Liechtenstein law, including the professional and ethical law of lawyers.

*Art. 77*

*Conversation*

1) If the Examining Board for Lawyers is convinced that the application for registration in the List of Lawyers could be granted on the basis of the findings obtained through the information and documents, it shall invite the applicant to a personal interview. In all other cases, the applicant shall not be entitled to an interview.

2) In the interview, it is to be examined whether the applicant has effectively and regularly practiced as a non-registered European lawyer in the field of Liechtenstein and EEA or Community law and whether he is capable of continuing this activity. The content of the interview shall relate to the professional practice of the applicant.

of the applicant and his other experience in Liechtenstein law.

3) The interview should also provide reliable information as to whether the applicant is sufficiently proficient in the German language.

IV. Exercise of the freedom to provide services

Art. 78

*Approval*

1) Nationals of a State party to the EEA Agreement who are entitled to practice law in their State of origin under one of the professional titles listed in the Annex to this Act shall be admitted to temporarily practice their profession in Germany on a cross-border basis (European lawyers providing services).

2) The activities referred to in Art. 8 shall be considered as professional practice.

3) If the cross-border practice of the profession loses its temporary character, the conditions for the establishment of lawyers from the EEA according to Art. 59 et seq. of the Austrian Civil Code apply to the further practice of the profession.

4) Nationals of other states may also temporarily exercise the activity of a lawyer within the meaning of paras. 1 to 3 on a cross-border basis in Germany, provided that a corresponding treaty agreement has been concluded with these states.

Art. 79

*Registration in the list of attorneys; office location*

The European lawyer providing the service is not obliged, but also not entitled, to be registered in the domestic list of lawyers and to establish a domestic office.

Art. 80

*Job title*

A European lawyer providing services who practices the profession of a lawyer in Germany shall use the professional title which he is entitled to use in the State in which he is established (home State) under the law in force there, in the language or one of the languages of the home State, and shall indicate the professional organization to which he belongs in the home State or the court before which he is admitted under the rules of the home State, as well as the State of origin. Art. 61, para. 2, shall apply.

Art. 81

*Consent Attorney*

In proceedings in which the party must be represented by a lawyer or in which a defense lawyer must be involved, the European lawyer providing the service must involve a lawyer by agreement in accordance with Art. 63. This does not apply if the European lawyer providing the service has successfully passed the qualifying examination (Art. 68 ff.).

Art. 82

*Authorized delivery agent*

1) For service in judicial and administrative proceedings, the European lawyer providing the service shall, as soon as he acts in the proceedings before the courts or administrative authorities, designate a lawyer entered in the list of lawyers as an agent for service; the designation shall be made vis-à-vis the court or administrative authority. Service of documents intended for the European lawyer providing the service shall be effected on the person authorized to accept service.

2) If no representative has been appointed for service, the lawyer acting in agreement shall be deemed to be the representative for service in the proceedings referred to in Art. 81. In all other cases, service shall be effected on the service-providing European lawyer by deposit with the court or with the administrative authority.

Art. 83

*Supervision*

1) The European lawyer providing the service is supervised by the Bar Association.

2) Before starting to work in the country, the European lawyer providing services must notify the Bar Association of his intention to do so and prove his status as a lawyer.

3) Retrieved

4) Retrieved

5) The Board of Directors of the Bar Association shall:

a) to advise and instruct the European lawyer providing the service in matters relating to the professional duties of a lawyer;

b) monitor the performance of the duties incumbent on these persons;

- c) to prohibit the provision of services and, if necessary, to inform the courts or administrative authorities thereof, if the requirements under paragraph 2 are not or are no longer met;
- d) inform the competent authority of the State of origin of decisions taken with respect to that person.

Art. 84

*Professional duties*

The European lawyer providing the service is subject to the professional duties incumbent on lawyers under this Act.

Art. 85

*Disciplinary*

Disciplinary authority over the European lawyer providing services shall be exercised by the Disciplinary Tribunal in accordance with the provisions of Art. 46 et seq.

Art. 86

*Individual representations*

- 1) Lawyers who are neither nationals of a State party to the EEA Agreement nor have the same status on the basis of treaty agreements may, upon application, be admitted by the Bar Association to represent or defend a party before Liechtenstein courts or administrative authorities on a case-by-case basis, if there are grounds for doing so which are particularly worthy of consideration.
- 2) Before starting to work in the country, the lawyer must prove to the Chamber of Lawyers:
  - a) the fulfillment of the requirements according to Art. 3 Para. 2 Letters a and b as well as Art. 83 Para. 2;
  - b) the written assignment or, if applicable, power of representation by the person giving the order or power of attorney.
- 3) The approval must be proven to the courts or administrative authorities.
- 4) Articles 79 to 85 shall apply *mutatis mutandis* to lawyers who have obtained a license.

V. Organization and implementation

A. General

Art. 87

*Organs*

The implementation of this law is entrusted to:

- a) the Bar Association;
- b) the examination board for lawyers;
- c) the disciplinary court;
- d) the courts.

Art. 88

*Processing of personal data*

- 1) The bodies entrusted with the implementation of this Act may process personal data, including personal data on criminal convictions and criminal offenses of the persons subject to this Act, to the extent necessary for the performance of their duties under this Act.
- 2) The duty to inform and the duty to notify pursuant to Art. 14 and 34 of Regulation (EU) 2016/679 as well as the data subject's right to information pursuant to Art. 15 of Regulation (EU) 2016/679 shall not apply insofar as their fulfillment would disclose information that must be kept secret due to overriding legitimate interests of the Bar or third parties. Art. 33 (2) and Art. 34 (2) of the Data Protection Act shall apply *mutatis mutandis*.
- 3) The bodies entrusted with the implementation of this Act shall take all technical and organizational measures necessary to protect data pursuant to paragraph 1.
- 4) Subject to overriding legitimate reasons, data pursuant to para. 1 shall be retained at least until the expiry of ten years after their necessity for the fulfillment of duties within the meaning of para. 1 has ceased to exist and shall then be deleted.
- 5) The government may regulate the details by ordinance.

Art. 89

*Official Secrets*

- 1) The bodies entrusted with the implementation of this Act and any other persons called in by them shall be subject to official secrecy for an unlimited period of time with regard to confidential information that becomes known to them in the course of their official activities.

2) Information subject to official secrecy may not be disclosed. Criminal law provisions and special statutory provisions are reserved.

Art. 90

*Fees*

- 1) The fees are based on the fee schedule of the German Bar.
- 2) In order to become legally effective, the schedule of fees shall require the approval of the Government and shall be published in the Provincial Law Gazette.

B. Liechtenstein Bar Association Art. 91

*Composition, legal form and legal status*

- 1) The Liechtenstein Bar Association (Bar Association) is formed by all lawyers registered in the Bar List and in the List of Established European Lawyers.
- 2) The Bar Association is an independent public corporation. It is subject to the supervision of the government. In its own sphere of activity, the government's supervision is limited to verifying the legality of the Bar's administrative management.
- 3) In disciplinary proceedings pursuant to Art. 46 et seq. the Bar shall have party status with full party rights.

Art. 92

*Obligations*

- 1) The Bar shall safeguard, promote and represent the professional and economic interests of its members. In doing so, the Bar is responsible in particular for safeguarding the honor, reputation and independence of the legal profession, as well as for electing the rights and monitoring the duties of its members.
- 2) The Bar Association shall conduct its business, unless it is expressly assigned to the Plenary Assembly, through its Board of Directors and the SPG Supervisory Commission.
- 3) The Bar Association shall be responsible, insofar as due diligence is concerned pursuant to Art. 3 para. 1 let. m DDA, for:
  - a) monitoring the enforcement of the Due Diligence Act (DDA); and
  - b) Supervision under the Act on the Enforcement of International Sanctions



(ISG).

Art. 93

*Plenary Assembly*

1) The following matters are assigned to the Plenary Assembly:

a) the election of the President, the Vice-President and the other members of the Board of Directors;

b) the election of an auditor;

b) the election of the SPG supervisory commission;

c) establishing the rules of procedure of the Bar; the rules of procedure shall be subject to the approval of the Government;

d) the determination of the annual dues of the members of the Chamber to cover the administrative costs;

e) the approval of the estimate of revenues and expenditures;

f) the approval of the annual financial statements;

g) the issuance of professional guidelines;

h) the issuance of fee guidelines; and

i) the issuance of training guidelines.

2) Contributions shall be assessed at the same rate for all Chamber members.

3) Unless the Rules of Procedure contain stricter provisions, the Plenary Assembly shall constitute a quorum if at least one quarter of the members of the Chamber are present; it shall adopt its resolutions by simple majority. For the adoption of resolutions on the Rules of Procedure, the presence of at least half of the members of the Chamber and a majority of two thirds shall be mandatory.

4) The Rules of Procedure of the Bar shall require the approval of the Government in order to be legally effective.

Art. 94

*Board of Directors*

1) The Board of the Bar Association consists of five members who are registered in the Bar List.

2) The President, the Vice-President and the other members of the Board of Directors are elected from among the members of the Chamber by an absolute majority of the votes cast by those present. The term of office is three years. Re-election is permitted.

- 3) The sphere of activity of the Board of Management includes in particular:
- a) the decision on applications under Articles 6, 7, 34, 43, 60, 70, 75, 83 and 86;
  - b) maintaining the lists pursuant to this Act, in particular the list of lawyers, the list of law companies, the list of registerable lawyers, the list of trainee lawyers and the list of established European lawyers; these lists shall be published on the homepage of the Bar;
  - c) the communication with authorities and third parties;
  - d) the collection and payment of the annual dues of the members of the Chamber;
  - e) rendering opinions on the adequacy of the attorney's fee and remuneration for services, as well as the requested amicable settlement of a dispute existing in this respect;
  - f) the settlement of disputes between members of the Chamber;
  - g) the appointment of a lawyer pursuant to Art. 28 and the determination of remuneration and advances pursuant to Art. 31 par. 6;
  - h) the decision on the existence of an important reason according to Art. 29 par. 3;
  - i) the professional supervision;
  - k) the appointment of a temporary deputy (Art. 57 par. 3);
  - l) the supervision of the activities of established European lawyers (Art. 64) and of European lawyers providing services (Art. 83);
  - m) the exercise of the party rights of the Bar in disciplinary proceedings;
  - n) the supervision of the management of the Registry pursuant to Art. 57 par. 3 let. a;
  - o) the preparation of business and the convening of the Plenary Assembly;
  - p) the exercise of party rights in appeal proceedings;
  - q) the execution of the decisions of the Plenary Assembly;
  - r) the preparation of legislative proposals and expert opinions on draft legislation;
  - s) the appointment of a member of the Board of Examiners of Lawyers (Art. 96);
  - t) the organization of educational and training events or the cooperation with other sponsors of such events;

- u) cooperation with foreign bar organizations;
  - v) the decision on appeals against decisions under paragraph 4;
  - w) deciding on applications from the DDA Supervisory Commission and the imposition of supervisory measures pursuant to Art. 28 DDA and Art. 5b ISG as well as the imposition of fines pursuant to Art. 31 DDA and Art. 11 para. 1a ISG;
  - x) the election of ad hoc members of the SPG Supervisory Commission;
  - y) the enactment of the schedule of fees; subject to Art. 90 Para. 2;
  - z) the appointment of the data protection officer.
- 4) The Board of Directors may delegate certain business to the President, individual members of the Board of Directors or individual members of the Bar for independent execution, in particular in the matters referred to in subsection 3(c), (f), (g) and (k).

Art. 95

*Fee and contribution assessment*

The legally enforceable assessment of contributions and fees is an execution instrument within the meaning of the Execution Code.

C. Examination board for lawyers Art. 96

*Examination board*

- 1) The Examination Commission for Lawyers shall be appointed by the Government for four years at a time. It consists of five members and the same number of substitute members. It shall include one member each of the State Court, the Supreme Court, the High Court and the Administrative Court, as well as one lawyer nominated by the Bar Association. The government shall appoint the chairman.
- 2) The members of the examination board are independent in the exercise of their office and are bound to secrecy.

VI. Cooperation Art.

97

*Cooperation of the courts and the Financial Market Authority with the Bar Association*

- 1) The courts shall forward to the Bar, without being requested to do so, all decisions of a disciplinary, criminal or administrative nature that it requires for the performance of its duties under this Act and the Due Diligence Act.

2) The Bar and the Financial Market Authority shall provide each other, without being requested to do so, with all information and documents required for the fulfillment of their supervisory duties under the Due Diligence Act. Information pursuant to Art. 17 para. 2 DDA remains reserved.

Art. 98

*Cooperation with competent bodies of EWRA Contracting States*

1) The Bar Association shall provide administrative assistance to the competent authority of another EEA Contracting State in order to facilitate the application of Directive 2005/36/EC.

2) The Bar shall inform the competent body of another EEA Contracting State of the existence of disciplinary, criminal or administrative sanctions.

3) The Bar may exchange the information referred to in paras. 1 and 2 with the competent bodies of another EEA Contracting State in compliance with the provisions of data protection law, if:

a) the sovereignty, security, public order or other essential national interests are not impaired or violated;

b) the recipients or employed and authorized persons of the competent body of the EEA Contracting State are subject to an equivalent duty of confidentiality;

c) it is ensured that the information provided is only used for professional purposes; and

d) the information will be disclosed only for those purposes to which the Bar has expressly agreed.

4) Moreover, the provisions of the Due Diligence Act shall apply to the cooperation of the Bar with the competent body of another EEA Contracting State in the field of Directive (EU) 2015/849.

VII. Appeals

A. Administrative procedure

Art. 99

*Appeals against decisions of the Bar Association, the Bar Examination Board and the Government*

1) Decisions and orders referred to in Art. 94 par. 4 may be appealed to the Board of the Bar Association within 14 days from the date of notification.

be raised.

2) Appeals against decisions and orders of the Board of the Bar Association may be lodged with the Government within 14 days of notification, and against such decisions and orders with the Administrative Court pursuant to Article 94(3)(w). The election of ad hoc members of the DDA Supervisory Commission pursuant to Article 94(3)(x) may not be appealed.

3) Appeals against decisions and orders of the Examination Board for Lawyers may be lodged with the Government within 14 days from the date of notification.

4) Appeals against decisions and orders of the Government may be lodged with the Administrative Court within 14 days of service.

B. Disciplinary proceedings Art. 100

*Appeals against decisions of the disciplinary court*

1) An appeal may be lodged with the Supreme Court within 14 days of service against a decision to discontinue proceedings, the order or refusal of interim measures and against any final decision of the disciplinary court.

2) The provisions of §§ 238 et seq. of the Code of Criminal Procedure shall apply mutatis mutandis to the appeal proceedings.

Art. 101

*Suspensive effect*

Appeals against the order or refusal of an interim measure (Art. 57) shall not have suspensive effect.

VIII Penal provisions Art.

102

*Transgression*

Any person who uses the designation "lawyer", "legal agent" or "law firm" or any of the professional designations listed in the Annex to this Act without authorization shall be punished by the Regional Court with a fine of up to 50,000 francs or, in the event of non-collection, with imprisonment for up to six months.

Art. 103

*Misdemeanor*

Any person who, without authorization, carries out in a businesslike manner an activity reserved by this Act to lawyers or legal agents shall be punished by the Regional Court for a misdemeanor with imprisonment of up to three months or a fine of up to 180 daily rates.

IX. Transitional and final provisions Art.

104

*Executive Orders*

- 1) The Government shall issue the ordinances necessary for the implementation of this Act.
- 2) It may, by ordinance, adapt the job titles listed in the Annex to this Act to the changed circumstances.

Art. 105

*Repeal of previous law*

It is repealed:

- a) Law of 9 December 1992 on lawyers (Lawyers Act; RAG), LGBl. 1993 No. 41;
- b) Act of 16 December 1994 on the amendment of the Law on Lawyers, LGBl. 1995 No. 22;
- c) Act of March 23, 1995, on the Amendment of the Act of December 9, 1992, on Lawyers, LGBl. 1995 No. 105;
- d) Act of December 7, 1995, on the Amendment of the Law on Lawyers, LGBl. 1996 No. 18;
- e) Act of 16 April 1997 on the Amendment of the Law on Lawyers, LGBl. 1997 No. 116;
- f) Law of 19 June 1997 on the amendment of the Law on Lawyers, LGBl. 1997 No. 151;
- g) Act of December 16, 1999, on the Amendment of the Law on Lawyers, LGBl. 2000 No. 53;
- h) Act of 20 June 2002 on the Amendment of the Law on Lawyers, LGBl. 2002 No. 109;
- i) Act of 22 November 2002 on the Amendment of the Law on Lawyers, LGBl. 2003 No. 21;
- k) Act of June 18, 2004, on the amendment of the Act on the

Lawyers, LGBl. 2004 No. 184;

l) Act of 25 November 2005 on the Amendment of the Law on Lawyers, LGBl. 2005 No. 283;

m) Act of 26 April 2007 on the Amendment of the Law on Lawyers, LGBl. 2007 No. 155;

n) Act of May 23, 2007, on the Amendment of the Law on Lawyers, LGBl. 2007 No. 177;

o) Act of May 23, 2007 on the Amendment of the Law on Lawyers, LGBl. 2007 No. 195;

p) Act of May 29, 2008, on the Amendment of the Lawyers Act, LGBl. 2008 No. 192;

q) Act of 23 October 2008 on the Amendment of the Lawyers' Act, LGBl. 2008 No. 361;

r) Act of 22 October 2009 on the Amendment of the Lawyers Act, LGBl. 2009 No. 327;

s) Act of 20 October 2010 on the Amendment of the Lawyers Act, LGBl. 2010 No. 390;

t) Act of 16 March 2011 on the Amendment of the Lawyers' Act, LGBl. 2011 No. 362.

Art. 106

*Lawyer lists*

The persons and companies registered with the FMA in the lists named below at the time of the entry into force of this Act shall be entered ex officio in the identical lists to be kept by the Bar Association:

- a) List of lawyers;
- b) List of Liechtenstein lawyers eligible for registration;
- c) List of established European lawyers;
- d) List of law companies;
- e) List of law companies with their partners;
- f) List of branches of law companies;
- g) List of branches of law companies with their partners;

- h) List of recipients at attorneys;
- i) List of recipients of law companies;
- (k) List of Legal Agents.

Art. 107

*Previous scope of professional practice*

Persons registered in the list of lawyers at the time of the entry into force of the Law on Lawyers of 9 December 1992, LGBl. 1993 No. 41, as well as legal agents (Art. 108) shall continue to be authorized to perform the following activities on a professional basis without a special license:

- a) Financial advice;
- b) Business Consulting;
- c) Accounting.

Art. 108

*Legal Agents*

- 1) The profession of a legal agent may be practiced by:
  - a) was registered with the government as a legal agent before February 27, 1958, and was still practicing that profession when the law of December 9, 1992, on attorneys entered into force; or
  - b) has received a permit from the government to practice the profession of legal agent prior to the entry into force of the Law of 9 December 1992 on lawyers.
- 2) Legal agents licensed under subsection 1 shall have the professional title of legal agent or any other title designated by the Government prior to the entry into force of the Act of December 9, 1992 on attorneys at law.
- 3) Legal agents are authorized to give professional legal advice and to professionally represent parties before courts and administrative authorities. In proceedings in which lawyers are required to act, legal agents are on an equal footing with lawyers, except before the State Court.
- 4) With regard to the other rights and obligations of legal agents, Articles 9, 12 to 21, 23 to 27 shall apply *mutatis mutandis*.
- 5) The disciplinary authority over the legal agents shall be exercised by the Supreme Court as disciplinary court in accordance with the provisions of Art. 46 *et seq.*



6) The Bar Association maintains a list of legal agents. This list is publicly available on the homepage of the Bar Association and is updated regularly.

Art. 109

*Liability insurance*

Existing liability insurance policies shall be adapted to the requirements of Articles 26 and 35 within six months of the entry into force of this Act.

Art. 110

*Pending proceedings at the FMA*

Proceedings pending before the FMA at the time of the entry into force of this Act shall be governed by the previous law.

Art. 111

*Pending disciplinary proceedings*

The provisions of this Act shall apply to disciplinary proceedings pending before the Supreme Court or the Supreme Judicial Court at the time this Act enters into force, if the decision to initiate or discontinue disciplinary proceedings has not yet been taken. Otherwise, the previous law shall apply.

Art. 112

*Entry into force*

Subject to the unused expiry of the referendum period, this Act shall enter into force on 1 January 2014, otherwise on the day following its promulgation.

### **XIII. Judicial Officer Act**

from march 12, 1998

#### **I. General provisions Art. 1**

##### *Term*

The judicial officer shall perform the judicial duties assigned to him in Section III (Arts. 13 to 19) of this Act and the duties assigned to him under Art. 11(1). He shall be a civil servant at the Regional Court and, subject to the provisions of the Court Organization Act, shall be subject to the provisions of civil service law.

##### **Art. 2**

##### *Training*

The candidates for the judicial officer training shall be employed by the Government on the proposal of the President of the Regional Court for a limited period of time for the duration of the training. The Government shall determine the number of candidates to be admitted to the judicial officer training program in accordance with the national budget.

##### **Art. 3**

##### *Fields of activity*

A judicial officer is appointed for one or more of the following areas of work:

- a) Civil procedure, execution and insolvency cases;
- b) Probate and guardianship matters, probate of wills, court filing matters, declarations of invalidity, and public notarizations;
- c) Criminal cases under simplified procedure.

##### **Art. 4**

##### *Employment*

1) The administration of judicial business may be delegated to a judicial officer only if the following personal requirements are met:

- a) complete familiarity with the work of the administration of justice;
- b) Suitability for independent party communication;
- c) Reliable completion of business in the relevant area of work;
- d) successful completion of the training.

2) Appointment as a judicial officer is made on the recommendation of the President of the Regional Court in accordance with the provisions of the State Personnel Act.

Art. 5

*Male terms*

Wherever masculine terms are used in this Act, this also includes women.

II. Position of the judicial

officer Art. 6

*Business Allocation*

Within the framework of the annual distribution of business of the Regional Court, the areas of work are assigned to the Rechtspfleger. The distribution of business also regulates the deputization.

Art. 7

*Right of the district judge to issue instructions*

- 1) The Rechtspfleger shall be bound only by the instructions of the Regional Court judge responsible in accordance with the allocation of duties in the performance of the duties for which he is responsible.
- 2) The district judge shall issue general instructions on the handling of legal issues in writing. The judicial officer shall enter such instructions in a record and keep it. In the event of a change of judge or a deputy judge, the Rechtspfleger shall obtain the written consent of the newly competent Land judge before handling a case for which a general instruction has been issued.
- 3) If the district judge issues an oral instruction for an individual case, the Rechtspfleger shall note this in the file and submit the note to the district judge for his information; a written instruction shall be added to the file.
- 4) If the judicial officer receives instructions within the meaning of para. 2 from several district judges which are not identical, he shall obtain the decision of the higher court.

Art. 8

*Execution by the district judge*

1) The district judge may reserve the right to deal with entire areas or individual items of business or may refer the matter to himself if, in his opinion, this is expedient in view of the factual or legal difficulty of the matter or the importance and scope of the decision. Such a measure shall be noted in the file.

2) If there is any doubt as to whether the execution of a business matter falls within the scope of work assigned to the Rechtspfleger, the Regional Judicial Council shall decide on the matter.

#### Art. 9

##### *Obligation to submit*

1) The judicial officer shall submit a piece of business that falls within one of his areas of work to the competent district judge if:

a) the district court judge has reserved or assigned the handling of the case to himself;

b) the judicial officer wants to deviate from the legal opinion of the district judge known to him;

c) difficulties of a legal or factual nature arise during processing.

2) The judicial officer shall submit appeals against his decisions, subject to Art. 10, para. 2, to the district judge without delay, together with all the documents necessary for the assessment of the appeal and a report. If interim investigations are necessary for the decision on the appeal, the judicial officer shall conduct them.

#### Art. 10

##### *Appealability of the decisions of the judicial officer*

1) The decisions of the judicial officer may be appealed in the same way as those of the district judge.

2) The Rechtspfleger may decide on appeals and non-rising appeals. § Section 490 of the Code of Civil Procedure shall apply *mutatis mutandis*.

3) Other appeals may be granted by the district judge; in this case, the rules applicable to appeal proceedings shall be applied to the reimbursement of costs.

4) If the district judge finds that the appeal should not be upheld or should be upheld only in part, the appeal shall be submitted to the appellate court together with the report of the judicial officer.

Art. 11

*Official position and supervision*

- 1) In addition to the assigned areas of work, the judicial officer may also be assigned judicial administration tasks by the president of the district court.
- 2) The judicial officer shall be subject to the official supervision of the president of the regional court and, insofar as he is active in the assigned areas of work, to the official supervision of the competent regional judge to whom he is assigned.

Art. 12

*Exclusion and rejection procedures*

The provisions applicable to the district judge shall apply mutatis mutandis to the exclusion and rejection of the Rechtspfleger.

III. Scope of action of the judicial

officer Art. 13

*Common provisions*

- 1) Each sphere of action (Art. 14 to 19) includes:
  - a) confirming the legal force and enforceability of court decisions in the respective field of work;
  - b) the decision on applications for the granting of legal aid, if it is requested for proceedings before the Rechtspfleger;
  - c) the imposition of administrative penalties.
- 2) The land judge is always reserved:
  - a) the reports to superior authorities;
  - b) letters to Liechtenstein representative authorities abroad, to foreign representative authorities in Liechtenstein, to other foreign authorities and to intergovernmental organizations;
  - c) the settlement of complaints;
  - d) the order and taking of an oath;
  - e) the ordering of detention and the conversion of fines into detention;
- f) Decisions where foreign law is applicable.

Art. 14

*Scope of action in civil procedure and execution matters*

1) The scope of action in civil procedural matters includes:

- a) the conduct of the debtor's proceedings and the legal proceedings, including the dismissal of the application or the action, until it becomes necessary to order a hearing;
- b) the procedure in inventory disputes, including the rejection of the application or claim, until it becomes necessary to order a hearing.
- c) Retrieved

2) The scope of action in execution matters includes:

- a) execution for the recovery of monetary claims
    - aa) by compulsory creation of a lien in accordance with Articles 58 and 59 EO;
    - bb) on the movable property in accordance with Art. 168 to 250 EO;
  - b) the procedure for submitting a list of assets and signing it in court;
  - c) in connection with the transactions listed in letters a and b, the decision on requests for postponement pursuant to Art. 24 letters c, d and f EO.
- 3) The execution on the basis of a foreign execution title is reserved to the district judge.

#### Art. 15

##### *Scope of action in insolvency matters*

- 1) The scope of action in insolvency matters includes bankruptcy proceedings under the Insolvency Code if the debtor is a natural person and does not operate a business at the time of opening.
- 2) The proceedings up to the decision on the petition for commencement of insolvency proceedings, including this decision and the appointment of the insolvency administrator, as well as the reorganization plan proceedings shall be reserved to the district judge.

#### Art. 16

##### *sphere of activity in probate matters and probate of wills*

- 1) The scope of action in probate matters and probate of wills includes:
  - a) the deposit of wills and the opening of wills;
  - b) the business of probate.
  - c) the business pursuant to Art. 153 and 154 AussStrG.

- 2) The business of probate proceedings shall be reserved to the district judge if:
- a) a testamentary disposition is available;
  - b) the decedent was domiciled or habitually resident abroad;
  - c) the right of inheritance is disputed in the course of probate proceedings;
  - d) the separation of the estate from the assets of the heir is required.

Art. 17

*Scope of action in matters of guardianship and advance maintenance payments*

1) The scope of action in guardianship and child support matters includes matters concerning rights between parents and children, guardianship, curatorship and guardianship of property, as well as child support matters.

2) The right is reserved to the district judge:

a) Proceedings to determine the legal validity of an acknowledgment of paternity, to declare a person of legal age to marry, to extend a person's minority, to approve a foster care agreement or subsequent naming, to approve adoption in lieu of a child, and to revoke approval or annul elective filiation;

b) Proceedings for the regulation and deprivation of individual or all purely personal rights and obligations arising from family law relations, with the exception of entering into and deciding on agreements on personal intercourse of a parent (grandparent) with his or her child (grandchild) and agreements of parents pursuant to Section 177 (1) of the Civil Code, as well as proceedings for the replacement of consents and approvals;

c) the authorization of acts of representation and consent of legal representatives, guardians, trustees and curators, except for the authorization to initiate proceedings for the establishment of paternity and for the payment of maintenance and the authorization of maintenance agreements;

d) supervising the investment, management and changes in the status of the property of a minor or other person in care, if the value of the property exceeds 200,000 francs;

e) Procedure for appointment or removal

aa) of a guardian pursuant to §§ 269 et seq. ABGB, including the termination, limitation or extension of the guardianship;

- bb) of a curator pursuant to § 278 items 3 to 5 ABGB;
- cc) of a curator for absent persons if they are not Liechtenstein citizens or if there are indications of their residence abroad;
- f) all guardianship court orders concerning persons who have their domicile or habitual residence abroad;
- g) the decisions on the replacement of wrongfully granted advances on maintenance payments. Art. 18

*Scope of action in matters of court filing, public notarization and declaration of invalidity*

The scope of action in matters of court filing, public notarization and invalidation includes:

- a) the judicial deposit according to § 1425 ABGB in non-contentious proceedings;
- b) the public certification according to Art. 81 to 98 RSO;
- c) the invalidation of securities pursuant to §§ 73 et seq. SchIT PGR.

Art. 19

*Scope of action in criminal cases*

The scope of action in criminal cases includes:

- a) the procedure for issuing penal orders in cases of infringement pursuant to § Section 328 of the Code of Criminal Procedure, including the rejection of late appeals;
- b) with regard to the penalty orders issued by the judicial officer, the granting of deferrals and installment payments pursuant to Section 250 (4) of the Code of Criminal Procedure, as well as the declaration of irrecoverability of court costs, unless a decision is to be made at the same time on the conversion of a fine into a substitute term of imprisonment.

IV. Training of the judicial officer

Art. 20

*Requirements*

A prerequisite for admission to the judicial officer training program is a high school education entitling the student to higher education.

Art. 21

*Subject of the training*

The training to become a Rechtspfleger takes place at the district court and includes the an-



aptitude for the independent execution of business. The training includes at least two fields of work according to Art. 3.

#### Art. 22

##### *Duration of the training*

1) The duration of training in two fields of work is twenty months, subject to paragraph 3.

2) The first eight months of training serve to acquire basic knowledge in the administration of justice and in Liechtenstein private, criminal and procedural law. In the following twelve months, the special training for the fields of work takes place.

3) The training shall be carried out in accordance with the instructions of the President of the Regional Court. The president may shorten the duration of the training, provided that the goal of the training is achieved earlier. If the purpose of the

training is required, part of the training can also be completed abroad.

#### Art. 23

##### *Additional fields of activity*

For an aspirant or judicial officer who is seeking training for an additional field of work, the additional training shall normally last six months. Art. 22 Para. 3 shall apply mutatis mutandis.

#### Art. 24

##### *Absence*

The time during which the trainee is absent from work for reasons other than vacations shall not be taken into account when calculating the duration of the training period, provided that it exceeds a total of 30 working days during a training year.

#### Art. 25

##### *Rechtspfleger Exam*

After completion of the training period, the President of the Regional Court shall set a date for taking the examination. The examination must be taken within three months of completion of the training.

#### Art. 26

##### *Examination board*

1) The examination shall be taken before an examination commission consisting of the President of the Regional Court as chairman, a Regional Court judge appointed by the Regional Judges' College and a lawyer appointed by the Bar Association.

2) The President of the Regional Court shall convene the Examination Commission for the individual case.

Art. 27

*Form and subject of the examinations*

For each field of work, the examination is to be taken first in writing and then orally; the subject matter of the examination is the information available on

legislation applicable to the fields of work in question and how it is applied.

Art. 28

*Written exam*

1) In the written examination, the papers must be written under the supervision of a member of the examination board in one day within three hours.

2) If more than two fields of work are to be examined, a separate examination must be held for each field of work.

3) The chairman of the examination commission shall determine the examination tasks. These shall consist of a corresponding number of tasks on matters falling within the scope of the judicial officer. The time of delivery of the examination tasks and the time of delivery of the examination paper shall be noted on it.

4) The literature aids that may be used in the written examination are determined in writing by the examination committee.

Art. 29

*Oral examination*

1) The oral examination will take place no earlier than 14 days after the written examination.

2) If the chairperson does not make a division, the members of the examination board may ask questions from the entire examination material.

Art. 30

*Result of the test*

1) The written and oral examinations are subject to an overall assessment

by the examination board. The result is "passed" or "failed".

- 2) The examination board decides on the result of the examination by majority vote; abstentions are not permitted.
- 3) Minutes must be taken of the vote and the result of the examination and must be signed by all three members of the examination board.
- 4) The chairman has to issue a certificate about the passed examination.
- 5) The decision of the Examination Commission on the result of the examination may be appealed to the Government on the grounds of legal and procedural defects within 14 days from the date of notification. The same shall apply if the appeal is taken to the Administrative Court.

Art. 31

*Repeat the test*

- 1) A failed examination can be repeated once, at the earliest after half a year.
- 2) If a candidate does not appear for the examination on the date set for him/her for inexcusable reasons or if he/she withdraws during the examination, the examination shall be deemed to have been failed. However, if excusable reasons exist, a new examination date shall be set for him/her.

V. Final provision Art.

32

*Entry into force*

This Act shall enter into force on the day of its promulgation.

## **XIV. Tax law**

from 23 September 2010

### **I. General provisions Art. 1**

#### *Subject*

This law regulates the collection:

- a) the property and acquisition tax;
- b) of the tax according to the expense;
- c) of the real estate gains tax;
- d) of the income tax;
- e) the foundation levy and the levy on insurance premiums.

#### **Art. 2**

#### *Terms and designations*

1) For the purposes of this Act shall be deemed to be:

a) Permanent establishment" means any fixed place of business through which the economic activity of an enterprise or a liberal profession is wholly or partly carried on. Permanent establishments are in particular:

1. the place of actual management;
2. a branch office;
3. an office;
4. a manufacturing plant;
5. a point of purchase or sale;
6. a workshop;
7. a site of exploitation of mineral resources;
8. a site of harnessing water forces;
9. a construction or assembly whose duration exceeds six months.

An insurance company also has a domestic place of business if it generates premium income domestically;

b) Residence": the place where a person stays with the intention of remaining permanently;

c) Ordinary residence" means the place or the territory where a person stays not only temporarily. Habitual residence is always and from the beginning a continuous stay of more than six months; short-term interruptions are not taken into account. Residence for the purpose of attending an educational institution and accommodation in an educational institution shall not be considered as habitual residence.

A stay in a health care institution, nursing home or sanatorium as well as a stay at a health resort or on vacation for up to twelve months do not constitute habitual residence or domicile;

d) "place of actual management": the place where the center of entrepreneurial management is located;

e) "seat": in the case of legal persons, the place determined by law, articles of association, statutes or the like. In the absence of such a provision, the seat shall be the place of actual administration.

2) The terms used in this Act to refer to persons shall be understood to mean members of the male and female sexes.

### Art. 3

#### *Abuse of design options*

1) Legal or factual arrangements that appear inappropriate to the economic circumstances and whose sole economic purpose is to obtain tax advantages are abusive if:

a) the granting of such tax benefit would be contrary to the intent and purpose of this Act; and

b) the taxpayer cannot provide any economic or other relevant reasons for the choice of this arrangement and the arrangement does not have any independent economic consequences.

2) If there is an abuse within the meaning of subsection 1, the taxes shall be levied in the manner in which they would have been levied if the legal structure had been appropriate to the economic transactions, facts and circumstances.

## II. State taxes

### A. General

### Art. 4

#### *Exceptions from the tax liability*

1) Exempt from tax liability are:

a) the Reigning Prince, the Hereditary Prince, the Princely Domain and the foundations which, according to the statutory purpose, serve the Reigning Prince in the fulfillment of his duties;

b) the state, the municipalities, the funds of the state and the municipalities, the special-purpose associations of the municipalities, the citizens' cooperatives, and the non-economically active public enterprises pursuant to the Public Enterprise Tax Act;

c) persons who enjoy tax exemption by virtue of international law;

d) Institutions for occupational pension provision.

2) Upon request, the Tax Administration shall exempt from tax liability legal entities and special assets without personality that exclusively and irrevocably pursue charitable purposes within the meaning of Art. 107 (4a) PGR without the intention of making a profit. About

The tax administration shall decide on the application. The tax exemption does not apply to net income from business operations maintained by them, provided that these generate income totaling more than 300,000 francs. A tax exemption is not already excluded by the fact that:

a) the person donates its funds, labor or assets in part to another person, who is also exempt from tax, for use for tax-privileged purposes within the meaning of sentence 1;

b) the person allocates funds in whole or in part to a reserve, insofar as this is required in order to be able to fulfill its tax-privileged statutory purposes in the long term.

3) The Government regulates by ordinance the exchange of data and documents between the foundation supervisory authority and the tax administration as well as the audit of compliance with the requirements for tax exemption by the tax administration and the audit offices.

#### Art. 5

##### *Standardized return on assets*

The amount of the interest rate used to determine the standardized return on assets (target return) is determined annually by the Finance Act.

#### B. Wealth and income tax

##### 1. Common provisions

#### Art. 6

*Personal tax liability*

1) Individuals are subject to unlimited tax liability on all their assets and all their income if they:

a) have their domicile or habitual residence in Germany; or

b) have their domicile or habitual residence abroad and are exempt from taxes there with regard to an employment relationship with the country on the basis of a treaty or international law practice (diplomats).

2) Individuals who are neither domiciled nor habitually resident in Germany are subject to limited tax liability on their domestic assets and domestic income.

3) The dormant estate is equal to the natural persons.

4) Domestic assets pursuant to para. 2 shall be deemed to be real estate located in Germany and permanent establishments located in Germany.

5) Domestic acquisition under para. 2 shall be deemed to be:

a) the acquisition of agricultural and forestry land used for domestic purposes as well as any other agricultural and forestry production within the country;

b) the acquisition from permanent establishments located in Germany;

c) income from employment within Switzerland within the meaning of Art. 14(2)(d) as well as substitute income within the meaning of Art. 14(2)(f) which is connected with a domestic employment relationship and is paid by a domestic insurance company. An employed activity carried out on board a sea-going vessel or aircraft operated in international traffic, or on board a vessel used for domestic shipping, is also deemed to be carried out in Switzerland if the place of actual management of the operating company is in Switzerland;

d) Remuneration paid to members of the board of directors, foundation board or similar bodies of legal entities and special asset dedications with registered office or actual administration in Switzerland, which these members receive for their organization function;

e) Benefits from old-age, survivors' and disability insurance, a company pension scheme or a pension fund based on a previous domestic employment relationship under public or private law;

- f) Benefits due to the termination of a vested benefits policy or a blocked account that was set up in Germany using vested benefits from the occupational pension plan;
- g) the debit income within the meaning of Art. 5 of the domestic taxable property according to para. 4.

Art. 7

*Time limit of the tax liability*

- 1) The tax liability begins on the day on which the taxpayer:
  - a) is domiciled or habitually resident in Germany (unlimited tax liability); or
  - b) has domestic assets or makes a domestic acquisition (limited tax liability).
- 2) The tax liability ends:
  - a) with the death of the taxpayer or the departure of the taxpayer abroad (unlimited tax liability); or
  - b) at the time when domestic assets or domestic income cease to exist (limited tax liability).
- 3) The dormant estate continues the decedent's previous tax liability until probate.

Art. 8

*Joint tax liability*

- 1) The assets and acquisitions of spouses living in a legally and factually inseparable marriage shall be aggregated under each matrimonial property regime and assessed jointly. Assets and acquisitions of persons living in a legally and factually inseparable registered partnership are added together.
  - 1a) The status of registered partners in this Act corresponds to that of spouses. This shall also apply with regard to maintenance contributions during the existence of the registered partnership as well as to maintenance contributions and the property dispute and dissolution of a registered partnership.
- 2) The assets and acquisitions of minor children living in the same household as their parents shall be attributed to the parents, subject to paragraph 4. The parents shall declare the assets and acquisitions of the minor children in their tax return.



3) If the parents are separated or divorced, or if one parent has died, subject to paragraph 4, the assets and acquisitions of minor children shall be attributed to the parent with whom the children live in the domestic community. This parent must declare the assets and acquisitions of the minor children in his or her tax return. If the children do not live with one parent or if both parents are deceased, the children are assessed independently for assets and income.

4) For income from gainful employment, minor children living in the same household as their parents or one of their parents shall in any case be assessed independently if this income exceeds the amount specified in Article 15(2)(i).

5) Notwithstanding paragraph 1, spouses may be assessed separately upon joint application. Paragraph 2 shall apply with the proviso that half of the tax shall be allocated to each parent. Unless otherwise provided, the spouses shall each be entitled to half of the deductions granted to spouses who are jointly assessed.

## 2. Wealth tax Art. 9

### *Material tax liability*

1) The subject of property tax is all movable and immovable property of the taxpayer.

2) The assets of the companies without personality are to be attributed to the participating partners and are to be taxed by them together with their other assets.

3) At the request of one or more beneficiaries and with the consent of the body responsible for distributions, the beneficiaries of irrevocable foundations, special asset dedications and establishments with a foundation-like structure are independently subject to wealth tax. In this case, the irrevocable foundation, special asset dedication or foundation-like institution shall be liable to pay the wealth or income tax instead of the beneficiaries.

4) The assets of revocable foundations, special asset dedications and establishments similar to foundations shall be attributed to the settlor and taxed by him. Para. 3 shall apply mutatis mutandis, with the proviso that the tax shall be paid at the rate corresponding to the total assets and the total acquisition of the creator, including the assets independently taxed under para. 3.

Art. 10

*Tax exempt assets*

Exempt from property tax and not to be taken into account in determining taxable property:

- a) the taxpayer's household effects and personal effects as well as privately used motor vehicles, provided that their total value does not exceed the amount of 25,000 francs, or 50,000 francs in the case of spouses subject to joint taxation;
- b) equipment and tools required for the exercise of an agricultural or commercial activity or for any other occupation, provided that their total value does not exceed the amount of 2,000 Swiss francs;
- c) Collections of artistic, historical or similar importance, which are made available for regular public viewing without the owner intending to purchase them, and which serve public education or are suitable for promoting tourism;
- d) the assets of agricultural products, such as hay, grain, fruits, according to the taxpayer's proof;
- e) the properties located abroad;
- f) the operating sites located abroad.

Art. 11

*Debt deduction*

- 1) When determining the taxable assets, the debts and other charges for which the taxpayer is liable as the principal debtor may be deducted from the assets. If he is jointly liable with other persons for a debt, only the part attributable to him may be deducted.
- 2) If assets are only partially taxed in Germany, the deduction of debts is allowed in proportion to the proportion of the part of the assets taxable in Germany to the total assets. A deduction of debts is excluded insofar as the amount of taxable assets becomes negative as a result.

Art. 12

*Determination of taxable assets*

- 1) The fair market value of the assets at the beginning of the tax year or at the beginning of the tax liability is decisive for the determination of the taxable assets. Here, as well as in the valuation of debts and other encumbrances,

the following valuation principles are to be observed:

- a) Livestock shall be appraised at fair market value.
  - b) Hydroelectric power shall be valued at fair market value, taking into account all relevant factors, such as the size and continuity of the conceded power, the location of the plant, and the cost and difficulty of its installation and operation.
  - c) Securities which have a price quotation are to be valued according to this price.
  - d) Securities that do not have a price quotation, as well as rights and claims that are not securitized in securities, including benefits that can be determined by value, insofar as they do not fall under subparagraph (e), are to be valued according to the fair market value, which as a rule is not to be set below the nominal value, unless the taxpayer proves that the nominal value does not correspond to the fair market value; in the valuation of disputed or demonstrably uncertain claims, the degree of probability of their collectability is to be taken into account.
  - e) Claims to recurring benefits, in particular current annuities, pledges, housing rights, privileges and usufructuary rights, are to be valued at the amount by which an equivalent benefit could be acquired from unrelated persons; pensions paid on the basis of a previous office or employment relationship are not to be taken into account in the valuation of assets.
  - f) Claims arising from life insurance policies that are eligible for surrender must be valued up to the maturity date according to the surrender value including the profit shares; the obligation to take this surrender value into account is not waived by the designation of a third party as beneficiary.
- 2) Buildings and land are generally valued at their capitalized earnings value, or at least at their estimated tax value.
  - 3) Business assets are to be valued at acquisition or production cost, reduced by depreciation and value adjustments.

#### Art. 13

##### *Dedication taxation*

- 1) If, as a result of the transfer of assets to a legal entity not exempt from taxation under Article 4(2) or of a special dedication of assets, such assets shall no longer be subject to wealth tax and any preferential treatment or shares shall not become subject to wealth tax, the transferor shall be liable to pay the tax.

In the case of a transfer of securities, a tax of 3.5% of the value of the transfer for property tax purposes is payable by the transferor. In the case of securities that do not have a quoted price, at least the pro rata equity value of the company is to be applied.

2) In the event of subsequent changes in the circumstances leading to the lapse of an otherwise continuing property tax liability of benefits or shares, as well as in the event of revocation of the application pursuant to Art. 9, para. 3, para. 1 shall be applied accordingly.

### 3. Acquisition tax Art. 14

#### *Material tax liability*

1) The subject of the acquisition tax is all income consisting of money or money's worth.

2) The acquisition includes in particular:

a) acquisition from the management of agricultural and forestry land as well as from any other agricultural and forestry production;

b) any income from self-employment in trade, commerce and industry;

c) any income from a self-employed activity other than those referred to in points (a) and (b);

d) all income from employment under private or public law (employment), including ancillary income such as compensation for special services, commissions, allowances, long-service and anniversary gifts, gratuities, tips,

Royalties and other benefits of monetary value. If the owner of a legal entity subject to tax under Art. 44 works for the entity, he must declare an appropriate salary. The scope of the work, the position and the associated responsibility, the professional ability, the size of the business and the other salary conditions in the business must be taken into account. This requirement also applies to persons working in companies who have a significant share in the capital of the legal entity and can thus exert a decisive influence on its management;

d) Remuneration of members of the Board of Directors, the Board of Trustees or similar bodies of legal entities and special asset dedications received by these members for their function on the body;

e) Income (pensions and lump-sum benefits) from old-age, survivors' and invalidity insurance, from compulsory accident insurance, from institutions

The Group's pension plans include pension payments from company pension plans and pension funds, as well as one-off and recurring payments in the event of death or for permanent physical or health-related disadvantages;

f) all other income that takes the place of income from employment, such as daily allowances from unemployment, accident, and social insurance.

The amount of the benefits is calculated by deducting the extraordinary expenses not covered by other insurance benefits from the benefits for life and health insurance;

g) Income from money games, provided that a money game tax according to the Money Game Act or a foreign tax has not already been levied on the same;

h) Compensation for the abandonment, replacement or non-exercise of an activity or right;

i) Alimony received by a taxpayer in the event of divorce, judicial separation or de facto separation, as well as alimony received by a parent for children under his or her care;

k) Benefits received by the taxpayer as a beneficiary, unless the benefit is subject to wealth tax in accordance with Article 12(1)(d) or (e) or Article 9(3);

l) the target income within the meaning of Art. 5 of the taxable property according to Art. 6, para. 1.

3) Remuneration in kind of any kind shall be deemed to be an acquisition in the same way as remuneration in cash.

4) The acquisition of the companies without personality is to be attributed to the participating shareholders and taxed by them together with their other acquisition.

5) Acquisition tax is an annual tax. The basis for its assessment shall be determined for one calendar year (tax year) at a time. If the unlimited or limited tax liability does not exist for an entire calendar year, the period of the respective tax liability shall take the place of the calendar year. Taxpayers with an acquisition pursuant to Art. 14, para. 2, subparas. b and c, who do not close their accounts with the calendar year, shall declare the taxable acquisition according to the results of the past business year.

#### Art. 15

##### *Tax free acquisition*

1) The acquisition tax is not levied due to the taxation of assets:

- a) the income of the property on which the taxpayer pays the property tax;
  - b) those recurring benefits received by the taxpayer that are taken into account in determining the taxable assets in accordance with Art. 12(1)(e).
- 2) Moreover, they are not subject to acquisition tax:
- a) Acquisition from the cultivation of foreign agricultural and forestry land and from any other agricultural and forestry production abroad;
  - b) Acquisition from permanent establishments located abroad;
  - c) non-recurring accumulations of assets in the form of inheritances, legacies and gifts, as well as from property division;
  - d) Asset accumulations from surrenderable private endowment insurance policies, excluding vested benefit policies and blocked accounts;
  - e) Payments to compensate for damage suffered and the payment of compensation sums;
  - f) Remuneration from the family compensation fund and other remuneration exempt from taxation by law;
  - g) Income received by the taxpayer from health and accident insurance, insofar as it is used to cover medical and hospital expenses, medications and other expenses caused by the illness or accident;
  - h) Remuneration from public funds or from funds of a public foundation, which serve as support due to need for assistance or care or for educational or training purposes;
  - h) Contributions from the state or employers toward the cost of out-of-home child care;
  - i) the income according to Art. 14 of persons with unlimited tax liability, provided that it does not exceed the subsistence minimum. The amount of the subsistence minimum is determined by the government by ordinance on the basis of the exempt income. If only part of the income is taxable in Switzerland, the total income is decisive. If the tax liability extends over a period of less than one year, the total acquisition must be converted to a full year;
  - k) Lump-sum payments made by an institution for occupational pension provision, insofar as these remain in a vested benefits account or

used to buy into a company pension scheme;

l) domestic real property gains from business assets, insofar as these are subject to real property gains tax, as well as capital gains from the sale of foreign real property;

m) Capital gains from the sale of components of movable and immovable private property;

n) shares in profits on the basis of participations in legal entities; in the case of business assets, however, this shall not apply to shares in profits if the requirements of Art. 48 paras. 3 to 5 are met;

o) capital gains from the sale or liquidation as well as unrealized increases in the value of participations in legal entities; in the case of business assets, however, this does not apply to capital gains and unrealized increases in value if the requirements of Art. 48(6) are met;

p) Compensation for honorary and volunteer work. The government determines the activities and the tax-free compensation limit by ordinance;

q) 30 % of the acquisition from the sale or abandonment of the business. The prerequisite for this is that the taxpayer definitively ceases his gainful activity by selling or giving up the entire business.

#### Art. 16

##### *Determination of the taxable acquisition*

1) The determination of the taxable acquisition is made:

a) in the case of agricultural and forestry acquisitions under Article 14(2)(a), on the basis of income units; the Government shall regulate the details by ordinance. Provided that a taxpayer keeps proper accounts in accordance with Art. 17, he may request that the acquisition determined on the basis of the annual accounts be taken as the basis for taxation;

b) in the case of acquisition under Art. 14(2)(b) and (c), on the basis of proper accounting or other suitable records in accordance with Art. 17. Transfers from business to private assets and vice versa shall be valued at market value;

c) in the case of acquisition under Art. 14(2)(d) and (d), by deducting profit costs from income.

2) For the purpose of determining the taxable acquisition may be deducted:

a) 600 francs from the agricultural acquisition pursuant to Art. 14, para. 2, subpara. a, up to an acquisition amount of 6,000 francs, 10 % for an acquisition of more than 6,000 francs, provided that the taxable acquisition is determined on the basis of income;

b) of the acquisition pursuant to Art. 14, para. 2, subpara. a, provided that the taxable acquisition is determined on the basis of the annual financial statements, as well as of the acquisition pursuant to Art. 14, para. 2, subparas. b and c:

1. all profit costs, such as the cost of materials and goods, wages and social security costs for employees, patent and license fees, depreciation and amortization, as well as all other expenses incurred in the course of business;

2. an appropriate return on the own capital employed in the business in the amount of the target return in accordance with Art. 5; Art. 12 par. 3 and Art. 54 par. 2 to 6 shall apply *mutatis mutandis*;

3. proven business losses, of the years preceding the tax year in question, to the extent that they could not be taken into account in the calculation of the taxable income of those years, but not exceeding 70% of the current taxable income;

4. losses from a foreign permanent establishment, insofar as these losses have not already been taken into account in the permanent establishment state. Ver-

If this permanent establishment records profits in the following years, these profits are to be attributed to the taxable acquisition at most to the extent of the losses previously offset against a domestic acquisition; the taxpayer must prove annually that the conditions for subsequent taxation are not met. The taxpayer must prove each year that the conditions for subsequent taxation are not met. The taxpayer must prove each year that the conditions for subsequent taxation are not fulfilled;

c) 1,500 francs from the acquisition in accordance with Art. 14 para. 2 subpara. d; this shall be without prejudice to the reimbursement of extraordinary acquisition costs. The Government shall issue regulations on the type, scope and amount of allowable expenses. With regard to the commute to work, the Government shall, irrespective of the means of transport used, determine flat-rate deductions by ordinance, taking into account the distance of the journey;

c) from the acquisition pursuant to Art. 14 para. 2 let. d expenses for travel, board and lodging. The government shall issue corresponding regulations by ordinance regarding the scope and amount of the permissible expenses;



d) in the case of old-age, survivors' and disability insurance pensions or disability pensions from accident insurance in accordance with Art. 14(2)(e): 70% of the income.

3) For the purpose of determining the taxable acquisition may also be deducted:

a) 12,000 francs for each minor child under the taxpayer's care and for each adult child in school or vocational training, if the taxpayer is the main breadwinner and is not entitled to a deduction under subparagraph (b) below; in the case of actual joint care by parents who are assessed separately, the deduction is available to each parent in equal shares;

b) maintenance contributions to a divorced, judicially or actually separated spouse, as well as maintenance contributions to a parent for children under his or her care, as well as for any person whom the taxpayer supports on the basis of a legal obligation;

c) the taxpayer's own contributions to old-age, survivors' and disability insurance, the family compensation fund, unemployment insurance and compulsory accident insurance;

d) contributions and premiums for private life insurance, health insurance and accident insurance not covered by subparagraph (c), up to a maximum of 3,500 francs for all taxpayers, up to a maximum of 7,000 francs for married couples assessed jointly and up to a maximum of 2,100 francs per child for which the taxpayer is entitled to a deduction under subparagraph (a);

e) one-off and ongoing contributions to recognized pension funds, pension funds and similar occupational pension institutions up to a maximum of 18% of the income pursuant to Art. 14(2)(a), (b), (c), (d) and (f) of the taxpayer or the spouses to be assessed jointly;

f) the education costs for children, except for the costs of primary, secondary and domestic music schools, up to an amount of CHF 12,000 per child per year. Education costs for children who are permanently employed are not deductible. Scholarships granted by public and private institutions must be deducted from the total amount of education costs. Proof of the education costs must be provided;

g) medical, accident and dental expenses not covered by insurance benefits, borne by the taxpayer for himself and the persons referred to in subparagraph (d), up to an amount of 6,000 francs per person. The costs exceeding the total amount of 300 Swiss francs per person shall be covered by

Provide evidence of receipts;

h) voluntary cash contributions to legal entities and special asset dedications domiciled in Switzerland that are exempt from taxation for exclusively and irrevocably charitable purposes in accordance with Art. 4 Para. 2, up to a maximum of 10% of the taxable income prior to the application of Para. 2 Letter b No. 3, with the exception of individual contributions that do not exceed the amount of CHF 100. Donations exceeding the total amount of 300 Swiss francs must be evidenced by receipts. This applies accordingly with regard to legal entities and special asset dedications domiciled in another member state of the European Economic Area or in Switzerland, which are made with a view to exclusively and irrevocably charitable purposes in the country of domicile of

are exempt from tax liability and to that extent meet the requirements for an application under Article 4(2);

i) the costs of job-oriented education and training, including retraining costs, up to a total amount of 12,000 Swiss francs, provided that:

1. a first degree at the upper secondary level has been obtained; or
2. has reached the age of 20 and it is not the cost of education up to the first upper secondary level qualification.

4) If a taxpayer's tax liability extends over a period of less than one year, the deductions in francs pursuant to paragraphs 2 and 3 shall be made only in the fraction corresponding to the duration of the tax liability.

5) In particular, the following are not deductible from the taxable acquisition:

- a) the expenses for the subsistence of the taxpayer and his family;
- b) professional expenses related to the taxpayer's professional status;
- c) contributions and premiums to private non-life insurance companies;
- d) all direct and indirect taxes.

6) Art. 47 par. 3 let. c, i and k as well as Art. 48 par. 7, Art. 49 to 52, 56 and 60 shall apply accordingly.

#### Art. 17

#### *Accounting and retention requirements*

1) Taxpayers with an acquisition under Art. 14(2)(b) and (c) are obliged to keep proper accounts or other suitable records. The Government shall regulate the details by ordinance.

2) The books and supporting documents must be kept for ten years.

#### 4. tax calculation

##### Art. 18

###### *Basics of tax calculation*

1) Insofar as asset amounts do not end in one hundred francs and acquisition amounts do not end in ten francs before application of Art. 14 para. 2 let. 1, these shall be rounded down to one hundred or ten francs respectively.

1a) If a taxpayer is liable to taxation in Switzerland on only part of his assets or acquisitions, the deductions under Article 16, paragraphs 2 and 3, may be deducted in their entirety to the extent that they are related to the acquisition liable to taxation in Switzerland. The other deductions under Art. 16 are deductible only in proportion to the income taxable in Switzerland to the total assets and income of the taxpayer, provided that the foreign law takes such deductions into account in a proportionate manner when taxing the foreign income. If the foreign law does not provide for such deductions, the remaining deductions may be deducted in full. The tax rate applicable to the domestic taxable income shall be the rate corresponding to the total assets and income, taking into account the deductions under Article 16.

2) In the case of taxpayers whose tax liability extends to a period of less than one year, the calculation is based on their income earned during the period of tax liability.

3) In the case of marriage, the spouses are taxed jointly for the entire tax year, unless a separate assessment is applied in accordance with Art. 8, para. 5.

4) In the event of divorce and legal or de facto separation of the marriage, the spouses shall be taxed separately for the entire tax year. The deductions under Article 16(3)(a) and (d) may be claimed by the spouses proportionally; the other deductions may be claimed by the spouse who actually provided the corresponding benefits.

5) In the event of the death of one spouse, the spouses shall be jointly liable for tax until the date of death. The death shall be deemed to terminate the tax liability of both spouses and to commence the tax liability of the surviving spouse; Article 21(2) shall apply mutatis mutandis.

6) Lump-sum benefits pursuant to Art. 14(2)(e) are subject to the following, taking into account

of the deduction pursuant to Art. 16, para. 2, subpara. d shall be taxed separately from the remaining taxable income. The average tax rate is to be applied to these lump-sum benefits, which results from the application of the tariff according to Art. 19 for a pension applicable according to the life expectancy of the beneficiary. The basic tax-free amount shall not be taken into account and the respective deduction amount shall be reduced by 150 francs in Art. 19(a), by 225 francs in Art. 19(b) and by 300 francs in Art. 19(c). If the determined pension is below the basic allowance, the first tariff level is applied.

7) Lump-sum settlements for recurring benefits are subject to the tariff that would result if a corresponding annual benefit were paid instead of the one-off benefit, taking into account the assets and other acquisitions.

Art. 19

*Tariff*

1) The national tax shall be calculated on the basis of the taxable acquisition, including the assets converted into an acquisition in accordance with Art. 14(2)(l). Subject to Art. 15, para. 2, subpara. i, Art. 21 and 22, it shall be (x) for taxable acquisitions:

a) for all taxpayers, subject to letters b and c: up to 15,000 francs (basic exemption amount): 0

from 15 001 francs to 20 000 francs: 0.01 - x 150

from 20 001 francs to 40 000 francs: 0.03 - x 550

from 40 001 francs to 70 000 francs: 0.04 - x 950

from 70 001 francs to 100 000 francs: 0.05 - x 1 650

from 100 001 francs to 130 000 francs: 0.06 - x 2 650

from 130 001 francs to 160 000 francs: 0.065 - x 3 300

from 160 001 francs to 200 000 francs: 0.07 - x 4 100

over 200 000 francs: 0.08 - x 6 100;

b) for single parents within the meaning of the Family Allowances Act: up to 22,500 francs (basic allowance): 0

from 22 501 francs to 30 000 francs: 0.01 - x 225

from 30 001 francs to 60 000 francs: 0.03 - x 825

from 60 001 francs to 105 000 francs: 0.04 - x 1 425

from 105 001 francs to 150 000 francs: 0.05 - x 2 475

from 150 001 francs to 195 000 francs: 0.06 - x 3 975  
 from 195 001 francs to 240 000 francs: 0.065 - x 4 950  
 from 240 001 francs to 300 000 francs: 0.07 - x 6 150  
 over 300 000 francs: 0.08 - x 9 150;

c) for spouses to be assessed jointly:

up to 30 000 francs (common basic tax-free amount): 0  
 from 30 001 francs to 40 000 francs: 0.01 - x 300  
 from 40 001 francs to 80 000 francs: 0.03 - x 1 100  
 from 80 001 francs to 140 000 francs: 0.04 - x 1 900  
 from 140 001 francs to 200 000 francs: 0.05 - x 3 300  
 from 200 001 francs to 260 000 francs: 0.06 - x 5 300  
 from 260 001 francs to 320 000 francs: 0.065 - x 6 600  
 from 320 001 francs to 400 000 francs: 0.07 - x 8 200  
 over 400 000 francs: 0.08 - x 12 200.

2) In the case of substitute property taxation within the meaning of Art. 9(3), the tariff in accordance with para. 1(a) shall apply to the target income of the property. The basic exemption amount is not taken into account and the respective deduction amount in paragraph 1(a) is reduced by 150 francs. If the taxable income is below the basic tax-free amount, the first rate level applies.

#### Art. 20

##### *Compensation of the cold progression*

- 1) If the national consumer price index has increased by 8% since the last adjustment of the cold progression, the government shall report this to the Diet. The index level before the beginning of the tax year shall be decisive in each case.
- 2) The Government shall also submit to Parliament a request for full or partial compensation for cold progression. Parliament shall decide on the compensation of the cold progression.
- 3) The full or partial compensation of the cold progression includes the adjustment of the tariff according to Art. 19 as well as the adjustment of the limits and deductions set in franc amounts according to Art. 16.

#### Art. 21

##### *Progression proviso*

1) The tax is payable at the rate corresponding to the total assets and total acquisition if an unlimited taxpayer:

a) has assets that are tax-exempt under Art. 10(e) and (f) or under a treaty for the avoidance of double taxation;

b) The taxpayer is entitled to a tax exemption on the purchase of goods or services that are exempt from tax under Art. 15(2)(a) and (b) or under an agreement for the avoidance of double taxation.

2) If a taxable person's tax liability extends over a period of less than one year, the tax rate calculated by multiplying the taxable income by the ratio of a full year to the duration of the tax liability shall be applied to the taxable income.

#### Art. 22

##### *Avoidance of double taxation*

1) If the assets are located in a country or the acquisition has been made in a country with which a convention for the avoidance of double taxation has been concluded which provides for a tax exemption for these assets or this acquisition, or if reciprocity has been granted, this asset or this acquisition shall be exempted; Art. 21, para. 1 shall remain unaffected.

2) If the assets are located in a state or the acquisition has been made in a state with which a treaty for the avoidance of double taxation has been concluded which provides for the crediting of a foreign tax for these assets or this acquisition, or if reciprocity has been granted, a tax of this state corresponding to the tax on assets and acquisitions shall be credited against the state and municipal tax attributable to these assets and this acquisition.

#### Art. 23

##### *Special features in the case of limited tax liability*

1) In the case of limited taxpayers, the acquisition tax:

a) in the case of acquisition within the meaning of Art. 6(5)(a), (b) and (g) at a tax rate of 4 % plus the respective municipal surcharge in accordance with para. 5, taking into account Art. 16 para. 1 letters a and b. Deductions pursuant to Art. 16, para. 2, may only be claimed to the extent that they are economically related to the domestic acquisition; this is subject to the ordinary assessment pursuant to para. 2;

b) in the case of acquisitions within the meaning of Art. 6(5)(c) to (f); subject to the ordinary assessment pursuant to para. 2.

2) An ordinary assessment is made:

a) in the case of acquisitions within the meaning of Art. 6(5), if the gross acquisition amounts to 200,000 Swiss francs or more; in the case of lump-sum benefits under Art. 6(5)(e) and benefits under Art. 6(5)(f), the acquisition converted by means of the pension rate (Art. 18(6)) shall be taken into account;

b) in the case of acquisitions within the meaning of Art. 6(5)(c), provided that the country has the exclusive right of taxation on the basis of a double taxation agreement, irrespective of the amount of the taxable acquisition;

c) in the case of acquisitions within the meaning of Art. 6 Para. 5 up to an amount of the gross acquisition of 200,000 Swiss francs upon application; subject to subpara. b. above.

3) In the ordinary assessment, deductions under Article 16, paragraphs 2 and 3, which are economically related to the domestic acquisition under Article 6, paragraph 5, letters a to f, may be deducted in their entirety; the other deductions under Article 16 are deductible in proportion to the domestic acquisition to the taxpayer's total acquisition. In this case, the tax rate applicable to the domestic acquisition shall be the rate corresponding to the total assets and the total acquisition, taking into account the deductions under Article 16.

4) Retrieved

5) In case of ordinary assessment, the tariff according to Art. 19 shall be applied and the following surcharge shall be levied:

a) in the case of acquisition under Art. 6(5)(a), (b) and (g), the municipal surcharge of the municipality in which the real property or business premises are located;

b) in other cases, a surcharge to be determined annually in the Finance Act.

5. tax deduction at source

#### Art. 24

##### *Acquisition subject to tax deduction*

1) The tax deduction at source is subject to unlimited taxpayers:

a) income from employment (Art. 14, para. 2, subpara. d) and substitute income replacing income from employment (Art. 14, para. 2, subpara. f);

b) Remuneration paid to members of the board of directors, foundation board or similar bodies of legal entities and special asset dedications received by these members for their function on the body (Art. 14 para. 2 let. d).

2) Subject to withholding tax for limited taxpayers:

- a) income from employment and substitute income that replaces income from employment (Art. 6(5)(c));
- b) Remuneration paid to members of the board of directors, foundation board or similar bodies of legal entities and special asset dedications with registered office or actual administration in Switzerland, which these members receive for their organization function;
- c) Benefits from old-age, survivors' and disability insurance or from a company pension scheme or a pension fund on the basis of a previous domestic employment relationship under public or private law (Art. 6(5)(e));
- d) Benefits due to the termination of a vested benefits policy or a blocked account that was set up in Switzerland using vested benefits from the occupational pension plan (Art. 6(5)(f)).

#### Art. 25

##### *Amount of tax deduction*

- 1) The basis of assessment for the tax deduction is the domestic gross acquisition, in the case of acquisitions subject to tax deduction within the meaning of Art. 24, para. 2, subpara. c, the domestic gross acquisition, taking into account Art. 16, para. 2, subpara. d.
- 2) In the case of acquisitions subject to tax deduction within the meaning of Art. 24(1)(a) and (2)(a), the tax deduction shall be determined by the tax administration. When determining the tax deduction, the amount of the anticipated annual acquisition, allowances for deductions and family circumstances are taken into account.
- 3) The tax deduction shall be 12% of the acquisition in the case of acquisitions subject to tax deduction within the meaning of Art. 24(1)(b) and (2)(b) to (d).
- 4) If the taxpayer or the payment debtor does not agree with the tax deduction, he may request the tax administration to issue a ruling on the existence and scope of the tax liability by the end of March of the calendar year following the due date of the payment. The person liable for payment remains obliged to withhold tax until a legally binding decision has been made.

#### Art. 26

##### *Double taxation agreement*

- 1) If, according to a treaty for the avoidance of double taxation, the right of taxation for the acquisition referred to in Art. 24 lies exclusively with the foreign country of residence of the taxpayer, the tax administration shall confirm, upon request, that the acquisition is subject to taxation in the foreign country of residence.



The tax exemption shall be granted to the payment creditor upon request. In this case, the payment debtor may waive the tax deduction.

2) If a treaty for the avoidance of double taxation limits the permissible domestic withholding tax to a certain rate, the tax administration confirms the permissible maximum withholding tax rate to the remuneration creditor upon request. In this case, the payment debtor may deduct the tax at a reduced rate.

3) If too much withholding tax has been withheld in accordance with a treaty for the avoidance of double taxation, the tax administration will refund the excess withheld tax to the creditor upon request.

Amounts. The deadline for filing an application is two years from the due date of the tax deduction amounts.

### Art. 27

#### *Obligations of the remuneration debtor*

1) The debtor shall take all measures necessary for the complete collection of the tax. In particular, he is obliged to:

a) to withhold the tax due when cash benefits are due and to collect the tax due from the taxpayer when other benefits (especially benefits in kind) are due;

b) report to the tax administration all persons to whom he pays benefits that are subject to tax deduction;

c) to deliver the periodic tax withholding amounts to the tax administration and to submit a statement of account in accordance with Art. 28 Para. 3 and to pay any difference amounts;

d) issue to the taxpayer a statement or confirmation of the tax deduction amounts.

2) The payment debtor is liable for the payment of the tax deduction amounts. If the payment debtor has not made the tax deduction or has made it inadequately, the tax administration shall order the additional payment. In this case, a corrected statement or confirmation shall be issued to the payment creditor. If the payment debtor has made too high a tax deduction, the payment creditor may reclaim the difference from the tax administration if it has been certified to him.

3) The payment debtor shall not be liable for tax withholding amounts that it has deducted due to

the submission of a certificate pursuant to Art. 26 par. 1 or 2, the accuracy of which he relied on. This shall not apply if the person liable for payment was aware, or was not aware due to gross negligence, that the certificate was incorrect.

4) The tax administration may require the taxpayer to pay in arrears the withholding tax owed by the taxpayer at source if:

- a) the payment debtor has not made the tax deduction or has made it insufficiently and a subsequent deduction from him is not possible;
- b) no tax deduction was withheld through no fault of the remuneration debtor;
- c) the payment debtor has not withheld the tax due to the submission of a certificate under Art. 26 par. 1 or 2, on the accuracy of which he relied.

#### Art. 28

##### *Payments on account and final payments*

1) Employers as remuneration debtors in the case of benefits pursuant to Art. 24 paras. 1 and 2 letter a must pay the sum of the tax withheld by them to the tax administration on a quarterly basis.

2) Those liable for payment of benefits in accordance with Article 24(2)(b) to (d) must pay the sum of the tax withheld by them to the tax authorities every six months.

3) The debtor of the remuneration shall submit to the tax administration:

- a) in the case of benefits under Art. 24(2)(b) to (d), a half-yearly statement of the tax amounts deducted;
- b) in the case of benefits pursuant to Art. 24 paras. 1 and 2 let. a, after the end of the calendar year, the statement of deducted tax deductions; any difference must be paid.

4) The deadline for payment of the amounts under paras. 1 to 3 and for submission of the statement of account shall be set annually by the tax administration. In case of late payment of the difference according to par. 3, interest on arrears shall be charged.

#### Art. 29

##### *Crediting and reimbursement*

1) If the taxpayer is subject to ordinary assessment, the taxable income subject to tax deduction must be declared irrespective of the tax deduction.

2) The certified tax deduction shall bear interest. The amount of the interest rate is determined by the government by decree.

3) The tax deductions referred to in paragraph 2 shall be credited against the state and municipal tax due. If the interest-bearing tax deductions exceed the state and municipal tax due, the difference shall be refunded to the taxpayer.

C. Taxation according to expenditure

Art. 30

*Tax liability and tax object*

1) For persons who take up residence or habitual abode in Liechtenstein for the first time or after at least ten years of absence from the country, who do not possess Liechtenstein citizenship, who do not engage in gainful employment in Liechtenstein, and who live from the income of their assets or other income accruing to them from abroad, a tax based on expenditure may be levied upon application instead of the wealth and income tax.

2) The application under paragraph 1 shall be submitted to the tax administration. The application shall contain detailed information on the expense.

3) Real property located in Switzerland is subject to property tax. Articles 10 and 11 do not apply.

4) The government shall regulate the details by ordinance.

Art. 31

*Review of the application*

The tax administration examines the application and decides whether the taxpayer is to be subject to taxation on the basis of expenditure or whether wealth and income tax is to be imposed on him in accordance with the ordinary tax procedure.

Art. 32

*Tax assessment*

The assessment of taxation according to expenditure is based on the total expenditure of the taxpayer.

Art. 33

*Tax rate*

The tax according to the expenses is 25% of the expenses according to Art. 32.

Art. 34

*Tax advance*

If the tax administration accepts the taxpayer's application, it shall prescribe the tax amount to the taxpayer and notify him of any amendments. The tax may be assessed on the basis of expenses for several tax years, provided that uniformity in the amount of expenses can be assumed.

D. Real estate gains tax Art. 35

*Taxable*

1) Any person who realizes a profit on the sale of real property located in Switzerland within the meaning of property law, or parts thereof, is liable to pay real property gains tax.

2) The taxpayer is the transferor.

3) The following are treated as equivalent to disposal:

a) the transfer of a property by compulsory sale or expropriation;

b) the economic change of ownership of a property, in particular by:

1. Legal transactions that have the same economic effect as a sale with regard to the power of disposal over a property;

2. the encumbrance of a property with private-law easements or public-law restrictions on ownership if these permanently and significantly impair the unrestricted use or the sale value of the property and a fee is paid for them;

3. the transfer of participation rights in legal entities whose main purpose is the acquisition, ownership, management and disposal of immovabilities.

Art. 36

*Tax exemption and deferral*

1) Exempt from real estate gains tax are:

a) Inconvenience compensation in expropriation proceedings;

b) Profits realized on the resale of real property acquired by a lien creditor or guarantor in foreclosure proceedings, to the extent that the profit exceeds the loss on the lien secured or

the amount of the guaranteed claim.

2) Taxation is deferred in the case of:

a) Change of ownership through transfer of assets upon death, advance inheritance or gift;

b) Property consolidation, building land reallocation or boundary adjustments carried out in accordance with public law.

3) Taxation is deferred upon application in the case of:

a) Restructurings, if they are tax neutral according to Art. 52;

b) Change of ownership between spouses, provided that the spouses live in a legally and factually inseparable marriage. The application must be submitted jointly by both spouses;

c) Change of ownership by transfer of real estate to settle claims under property law or maintenance law or claims resulting from the participation of one spouse in the acquisition by the other. The application must be submitted jointly by both spouses.

4) In the event of deferral of taxation under paragraphs 2 and 3, the acquirer of the real property shall continue to bear the investment costs of the seller.

#### Art. 37

##### *Land profit*

1) The gain on the sale of real estate is the amount by which the proceeds from the sale exceed the cost of the investment.

2) In the case of an exchange of real property, the difference between the fair market value of the received property (value in kind and premium) and the investment costs of the transferred property is considered a gain on real property. Only the realized part of the gain is taxable.

#### Art. 38

##### *Investment costs*

Investment costs shall be deemed to be the official taxable value in accordance with Art. 12 (2) at the time of sale, increased by:

- a) the purchase price to the extent that it exceeds the official tax assessed value, and
- b) the value-enhancing expenses excluding the usual value maintenance costs.

#### Art. 39

*Proceeds from sale*

1) In the event of a sale by purchase agreement, the purchase price including all further payments by the purchaser shall be deemed to be the sale proceeds. If the purchase price is disproportionate to the customary market value, the latter shall be deemed to be the proceeds of the sale, unless the seller is related to the acquirer by blood in a direct line or in a collateral line up to the third degree or is the spouse of the acquirer.

2) In the event of a transfer of real property by compulsory auction or dispossession, the proceeds of the auction or the amount of compensation shall be deemed to be the proceeds of dispossession.

Art. 40

*Deductions*

Losses incurred by the taxpayer on the real property in previous years may be deducted from the gain on the real property resulting from Articles 37 to 39, unless such losses were covered by insurance benefits.

Art. 41

*Taxable real estate gain*

What remains after making the deduction under Art. 40 shall constitute the taxable real property gain.

Art. 42

*Tax rate*

The taxable real property gain shall be subject to the tariff under Art. 19(a). If, within five years, several parcels of the same real property or real property which five years ago had a

If the same taxpayer sells the same real estate unit, the basic allowance shall be granted only once to the same taxpayer.

Art. 43

*Surcharges*

A surcharge of 200% shall be levied on the amount calculated in accordance with Art. 42 instead of the municipal surcharge.

E. Income tax

1. Tax liability

## Art. 44

*Personal tax liability*

1) Legal entities are subject to unlimited tax liability for their entire income if their registered office or place of effective management is located in Germany; in particular, legal entities are deemed to be such entities:

a) Corporations (associations, joint stock companies, limited partnerships, limited liability companies, cooperatives, mutual insurance companies), institutions and foundations;

b) Undertakings for collective investment in transferable securities pursuant to the UCITSG, investment undertakings pursuant to the IUA and alternative investment funds pursuant to the AIFMG or comparable undertakings for collective investment established under the law of another state, with the exception of the investment limited partnership and the investment limited partnership without legal personality or comparable undertakings for collective investment established under the law of another state;

c) Trust company with personality.

2) Legal entities as defined in paragraph 1 that have neither their registered office nor the place of their actual administration in Austria, as well as special asset dedications without personality, shall be subject to limited taxation on their domestic income.

3) Domestic income pursuant to para. 2 shall be deemed to be:

a) income from the management of agricultural and forestry land in Germany;

b) rental and leasing income from real estate located in Germany;

c) the taxable net income of the permanent establishments located in Germany;

d) income from remuneration for activities as a member of the board of directors or foundation council or as a member of similar bodies of legal entities and their special asset allocations with registered office or actual administration in Germany, which are paid for the performance of this function, insofar as this income is not attributable to a domestic permanent establishment.

## Art. 45

*Personal tax exemptions*

1) Upon request, the tax administration shall exempt legal entities from income tax in accordance with Art. 44, para. 1, if they

a) the payment of profit shares on the target income pursuant to Art. 5 of the not in

limit capital received in the form of donations from third parties;

- b) exclude the payment of royalties in the articles of association;
- c) perform charitable tasks to the exclusion of any economic activity; and
- d) in the event of the dissolution of the legal entity, allocate the remainder of the assets after repayment of the capital not received in the form of donations from third parties to similar purposes.

2) Upon application, the tax administration shall also exempt legal entities pursuant to Article 44(1) that pursue non-material purposes from the income tax. The tax exemption does not apply to net income from business operations maintained by them, provided that these generate income totaling more than 300,000 francs.

#### Art. 46

##### *Time limit of the tax liability*

1) The tax liability begins:

a) with the establishment of the legal entity or with the transfer of its registered office or the place of its effective management to the domestic territory (unlimited tax liability); or

b) at the time when domestic income is generated or at the time when the permanent establishment is entered in the commercial register (limited tax liability).

2) The tax liability ends:

a) with the completion of liquidation or with the transfer of the registered office or the place of its effective management abroad (unlimited tax liability); or

b) with the cessation of domestic income or with the deletion of the permanent establishment from the commercial register (limited tax liability).

2. Determination of the taxable net income Art.

#### 47

##### *Material tax liability*

1) The income tax is calculated on the basis of the taxable net income. This is to be determined in compliance with the following provisions in accordance with the annual financial statements to be prepared in accordance with the law on partnerships and companies; annual financial statements in accordance with international accounting standards pursuant to Art. 1139 PGR are excluded.



2) Art. 14 par. 4 shall apply accordingly.

3) Subject to paras. 4 and 5, the taxable net income shall consist of the total income reduced by the expenses incurred for business purposes. The taxable net income includes in particular:

a) the balance of the income statement;

b) all parts of the operating result excluded from the calculation of the balance of the income statement that are not used to cover expenses justified by the business;

c) Depreciation, value adjustments and provisions, unless they are justified by the business;

c) realized and unrealized losses from investments in legal entities;

d) Allocations to the reserve fund to the extent that they are not justified in terms of business, subject to any tax-privileged reserves pursuant to Art. 60;

e) the profits and hidden profit distributions distributed to the members or shareholders of the company or to holders of non-member profit-sharing rights (profit participation certificates, founder's shares) or persons closely associated with them;

f) Tax expense;

g) Remuneration for the provision of borrowed capital to affiliated companies and shareholders or persons closely associated with them, insofar as the amount of such remuneration does not at least comply with the arm's length principle pursuant to Art. 49;

h) voluntary cash payments to legal entities and special asset dedications domiciled in Switzerland that are exempt from taxation for exclusively and irrevocably charitable purposes pursuant to Art. 4, para. 2, to the extent that they exceed 10% of the taxable net income before application of Arts. 57 and 58. This shall apply mutatis mutandis with regard to legal entities and special asset dedications with their registered office in another member state of the European Economic Area or in Switzerland, which are exempt from tax liability with regard to exclusively and irrevocably charitable purposes in the state in which they are domiciled and, to this extent, also meet the requirements for an application pursuant to Art. 4, para. 2;

i) fines, monetary penalties and comparable legal consequences of a pecuniary nature, provided that the punitive nature predominates;

- k) Compensation under sections 307, 307a, 307b, 308 and 309 of the Criminal Code;
- l) in the case of investments in undertakings for collective investment in transferable securities under the UCITSG, investment undertakings under the IUA and alternative investment funds under the AIFMG or comparable accumulating undertakings for collective investment established under the law of another country: the annual realized result of the undertakings or investment funds.
- 4) Net taxable income does not include:
  - a) Capital contributions by members of corporations and cooperatives, including premiums and à fonds perdu benefits;
  - b) Capital appreciation from inheritance, bequest or gift;
  - c) Contributions to foundations, institutions similar to foundations and special asset dedications with personality by the creator and beneficiaries.
- 5) Limited taxpayers may only claim deductions when determining taxable net income to the extent that they are economically related to domestic income in accordance with Article 44(3).
- 6) Income tax is an annual tax. The basis for its assessment shall be determined for one calendar year (tax year) at a time. If the unlimited or limited tax liability does not exist for an entire calendar year, the period of the respective tax liability shall take the place of the calendar year. Taxpayers who do not close their accounts with the calendar year shall declare the taxable net income according to the results of the past business year.
- 7) The Government shall regulate the details of the taxable net income by ordinance.

Art. 48

*Tax free income*

- 1) In the case of unrestricted taxpayers, the taxable net income does not include:
  - a) Income from the cultivation of foreign agricultural and forestry land and from any other agricultural and forestry production abroad;
  - b) foreign permanent establishment results;
  - c) Rental and leasing income from properties located abroad;

- d) domestic real estate gains, insofar as these are subject to real estate gains tax in Germany, as well as capital gains from the sale of foreign real estate;
  - e) Profit shares due to participations in legal entities;
  - e) Distributions from foundations, institutions similar to foundations, and special asset dedications with personality;
  - f) Capital gains from the sale or liquidation and unrealized appreciation of investments in legal entities;
  - g) Income from the assets under management of undertakings for collective investment in transferable securities under the UCITSG, investment undertakings under the IUA, alternative investment funds under the AIFMG or comparable undertakings for collective investment established under the law of another country;
  - h) Income from the net assets of legal entities that are subject to the Pension Fund Act, provided that these assets are exclusively and irrevocably allocated to the company pension plan.
- 2) In the case of limited taxpayers, the taxable net income does not include:
- a) domestic real estate gains, insofar as these are subject to real estate gains tax in Germany;
  - b) Profit shares due to participations in legal entities;
  - c) Distributions from foundations, institutions similar to foundations, and special asset dedications with personality;
  - d) Capital gains from the sale or liquidation and unrealized appreciation of investments in legal entities;
- 3) Profit shares and distributions shall be included in the taxable net income in derogation of paragraph 1 letters e and es and paragraph 2 letters b and c:
- a) in the case of participations of at least 25% of the votes or capital, or in the case of preferential treatment, if the profit shares or distributions can be claimed as an expense for tax purposes by the legal entity making the payment; or
  - b) In the case of participations and benefits, if:
    - 1. more than 50 % of the total income of the foreign legal entity providing the services consists of passive income on a sustained basis, unless this income is generated in the course of the actual economic activity of the legal entity providing the services.

Person achieved; and

2. the net profit of the foreign performing legal entity is directly or indirectly subject to low taxation. Low taxation is considered to be:

aa) in the case of shareholdings of less than 25% of the votes or capital or in the case of preferential treatment, a charge to income tax at a rate of less than half the domestic tax rate under Art. 61;

bb) in the case of participations of at least 25% of the votes or capital, an effective income tax burden of less than 50% of the income tax burden in the comparable domestic case under the provisions of this Act.

4) Passive income in accordance with para. 3(b)(1) is deemed to be:

a) Interest or other income from financial assets, royalties or other income from intellectual property and income from finance leases;

b) Shares in profits from participations in or distributions by foreign legal entities, more than 50 % of the total income of which is attributable to foreign companies.

% consists of passive income taxed at a low rate within the meaning of subparagraph 3(b)(2) under subparagraph (a) and provided that this income was not earned as part of an actual economic activity;

c) capital gains from the sale or liquidation as well as unrealized increases in the value of participations in foreign legal entities, provided that they meet the requirements under subparagraph b.

5) Total income pursuant to paragraph 3(b)(1) is deemed to be all income generated by the foreign legal entity without taking into account expenses and deductions. Net income pursuant to paragraph 3(b)(2) is deemed to be all income generated directly or indirectly by legal entities with the addition of the respective foreign income taxes (prior charge).

6) In derogation of paragraph 1(f) and paragraph 2(d), capital gains are included in taxable net income if they are attributable to the sale or liquidation of participations in foreign legal entities whose profit shares are included in taxable net income on the basis of participations in accordance with paragraph 3(b). This also applies to unrealized increases in value.

7) When claiming tax-exempt income in accordance with subsections 1(e) to (f) and 2(b) to (d), taxpayers must prove that the conditions set out in subsections 3 to 6 are not met.

#### Art. 49

#### *Arm's length principle*

- 1) If a taxpayer's income or expenses from a business relationship with related parties or with a permanent establishment are changed by applying different terms and conditions than would have been agreed upon by unrelated third parties under otherwise identical circumstances, the income and expenses shall be recognized in determining the taxable net income as they would have been if the relationship had been between unrelated third parties.
- 2) The taxpayers have to prove the appropriateness of the transfer prices of material transactions with related parties and permanent establishments by means of documentation.
- 3) The government shall regulate the details by ordinance, in particular the determination of transfer prices and the type and form of documentation.

#### Art. 50

##### *Replacement purchases*

- 1) If an asset of the business assets is removed from the business assets, the hidden reserves can be transferred to an asset (replacement asset) if:
  - a) it is an asset of the fixed assets necessary for the business that directly serves the business; in particular, assets that serve the business only as an investment or only through their income, participations as well as land are excluded insofar as the profit from their sale is subject to real estate gains tax;
  - b) replacement of the asset was necessary for economic, legal, technical or factual reasons; and
  - c) the hidden reserves in the replacement property are subject to taxation in Germany.
- 2) If the replacement does not take place in the same fiscal year, a provision may be made to the extent of the hidden reserves. This provision must be used within a reasonable period of time for depreciation on the replacement property or reversed in favor of the taxable net income.
- 3) If the taxpayer receives compensation for an asset that has been damaged as a result of force majeure or government intervention, a provision may be recognized in the amount of the compensation if the asset is not repaired until a later fiscal year. The provision shall be released in full to taxable net income at the time of repair.

Art. 51

*Delimitation of the right of taxation*

- 1) If the domestic right of taxation with respect to the gain from the sale or use of an asset is excluded or limited by measures of the taxpayer, the asset is deemed to be sold or transferred at the arm's length price.
- 2) If the exclusion or restriction of the domestic right of taxation is based on the transfer of an asset to a permanent establishment abroad or on the departure or relocation of the taxpayer's registered office abroad, the tax shall be deferred without interest until the actual realization, provided that the enforcement of the tax claim is ensured. Decreases in value that have occurred in the meantime shall be taken into account at most to the extent of the assessment basis pursuant to para. 1 and only to the extent that they are not taken into account in another state. The taxpayer must prove each year that the requirements for deferral pursuant to sentence 1 have been met; in the event of a reduction in value occurring upon actual disposal, the taxpayer must prove that no income is taken into account abroad.
- 3) If the domestic right of taxation is established with respect to the gain from the sale or use of an asset, the asset is deemed to be acquired or used at the arm's length price.

Art. 52

*Restructuring*

- 1) Hidden reserves of a legal entity (company) shall not be taxed in the case of the reorganizations mentioned below, provided that the domestic tax law continues to apply and the acquiring company continues the values that were previously relevant for income tax purposes. Restructurings within the meaning of this article are in particular:
  - a) transformation into another legal entity or into a company without personality (change of legal form);
  - b) the transfer of assets by means of a split-up or spin-off to one or more other legal entities, provided that a part of the business is transferred to each of the acquiring entities and provided that in the case of spin-off, a part of the business remains with the transferring company;
  - c) the merger;

d) the contribution of businesses or parts of businesses as well as investments in domestic or foreign legal entities held as business assets.

2) The acquiring company is not bound in its valuation to the valuation in its profit determination under commercial law.

3) Insofar as the domestic right of taxation does not continue to exist on the occasion of a reorganization pursuant to para. 1, Art. 51, para. 2 shall apply *mutatis mutandis*.

4) In the cases referred to in paragraph 1(a) to (c), the acquiring company shall assume the legal tax status of the transferring company; this shall also apply with regard to loss recognition in accordance with Art. 57. In the cases referred to in paragraph 1(b), a loss carryforward of the transferring company shall be transferred in proportion to the transferred assets.

5) If, in the cases referred to in paragraph 1(c) and (d), consideration is provided that does not consist of shares in the acquiring company, the acquiring company shall recognize the assets contributed at least at the value of the consideration provided.

6) In the case of the acquiring company, a profit or loss in the amount of the difference between the value of the shares in the transferring company previously relevant for income tax purposes and the acquisition value of the assets and liabilities transferred shall not be taken into account.

7) If the profit of the acquiring company increases due to the fact that the transfer of assets leads to the extinguishment of receivables and liabilities between the transferring and the acquiring company or to the reversal of provisions, the acquiring company may form a provision reducing the taxable profit in this respect. At least one third of the provision shall be reversed in favor of the taxable net income in each of the three fiscal years following its creation.

8) In the case of shareholders of the transferring company who become shareholders of the acquiring company on the occasion of a restructuring, the shares in the transferring company shall be deemed to have been sold at the value previously relevant for income tax purposes and the shares replacing them shall be deemed to have been acquired at this value. In the cases referred to in subsection 1(d), the shares received on the occasion of the contribution shall be deducted from the

The value of the assets contributed is to be valued by the shareholder at the value of the assets previously used for income tax purposes.

9) The income and assets of the transferring enterprise as well as of the acquiring enterprise shall be determined as if the assets of the transferring enterprise had been transferred in whole or in part to the acquiring enterprise at the end of the cut-off date of the balance sheet on which the transfer is based. This cut-off date may not be more than eight months prior to the filing of the restructuring for registration in the Commercial Register or, if registration is not required, no more than eight months prior to the date of the conclusion of the contribution agreement.

10) In the event of the sale of a participation acquired in the last five years by means of a transaction pursuant to subsection 1(d) at a value below the market value at that time, the hidden reserves transferred shall be taxed retrospectively, reduced by one fifth for each full year after the taxable transfer date. This shall apply mutatis mutandis in the case of transactions which, other than by sale, lead from an economic point of view to a realization, not subject to tax in Germany, of the hidden reserves resting in the shares received, as well as in the case of transactions within the meaning of Article 51, paragraph 1, unless a deferral is to be granted in accordance with Article 51, paragraph 2. The shareholder shall prove annually that the conditions of this paragraph are not met.

Art. 53

Repealed

Art. 54

*Equity interest deduction*

1) The appropriate interest on the modified equity capital in the amount of the target income in accordance with Art. 5 (equity capital interest deduction) is also deemed to be a business-related expense. No current loss may arise or increase as a result of the equity capital interest deduction.

2) The modified shareholders' equity comprises the paid-in share capital, ordinary share capital or capital stock and the reserves representing the company's own assets. The following must be deducted from this

- a) own shares;
- b) Investments in legal entities;
- c) non-operating assets;
- d) a deduction of 6% of all assets excluding the assets referred to in points (a) to (c).

The valuation is carried out at the beginning of the fiscal year, taking into account the additions and disposals.



Disposals in the current financial year are to be taken into account. If the modified equity is negative, the equity interest deduction is 0 francs.

3) The difference between the actual interest rate and the interest rate at the equity interest rate shall be deducted from the equity interest deduction determined in accordance with paragraphs 1 and 2 in the case of receivables from shareholders, founders and beneficiaries and related parties which bear interest at a rate below the equity interest rate. However, no deduction is to be made if the receivables arise from the main operating activity of the legal entity.

4) If participations in legal entities which claim an equity capital interest deduction in accordance with the provisions of this Act or a deduction comparable in effect thereto are financed with borrowed capital, a tax-effective set-off shall be made to the extent of the debit income of this borrowed financing, but not exceeding the amount of the equity capital interest deduction claimed by the participation. The relevant debt financing results from the deduction of own shares and participations according to sentence 1 from the equity according to para. 2 sentence 1.

5) In the case of the following transactions, the equity interest deduction is not allowed unless the taxpayer proves that the transactions are not for tax reasons but for economic or other relevant reasons:

a) contributions in cash and in kind from related parties, unless already covered by paragraph 2(c);

b) Acquisition of businesses or parts of businesses held by affiliated companies;

c) Transfer of interests to related parties or from related parties.

6) The government shall regulate the details by ordinance.

Art. 55

Repealed

Art. 56

*Merchant  
ships*

Upon application, the provisions of this chapter may be waived in determining the taxable net income insofar as it is attributable to the operation of merchant vessels. The Government shall regulate the details by ordinance.

Art. 57

*Losses*

1) A positive taxable net income of the year shall be reduced by the loss carried forward, but not more than 70% of the taxable net income. The loss carried forward at the end of the year is the loss carried forward at the end of the previous year, increased by a loss and reduced by an amount offset in accordance with sentence 1.

2) Losses from a foreign permanent establishment may be offset against taxable net income to the extent that these losses have not already been taken into account in the permanent establishment state or another state. If this permanent establishment records profits in subsequent years, these profits shall be attributed to the taxable net income, at most to the extent of the losses previously offset against a taxable net income; the taxpayer must prove annually that the conditions for subsequent taxation are not met. The taxpayer must prove each year that the conditions for subsequent taxation are not met. The taxpayer must prove each year that the conditions for subsequent taxation are not fulfilled.

Art. 58

*Group taxation*

1) Upon application, affiliated legal entities may form a group of companies in accordance with paragraph 2 and offset the losses incurred within the group of companies against profits in the same year. The compensation shall be made by way of loss allocation from the group members to the group parent or to the extent that there is a loss after offsetting any attributable losses against the taxable net income of the group parent.

Group parent to a group member that is subject to unlimited tax liability in Germany. Losses are allocated on a pro rata basis in the amount of the group parent's direct interest in the share capital, common stock or equity of the group member attributable to domestic business assets (participation quota). The losses attributable to a group member are limited to the share of the taxable net income of this group member corresponding to the participation quota. A loss carryforward of a group member existing prior to the filing of the application cannot be attributed to the group parent or a group member, but can only be offset against positive taxable net income of the group member that has suffered the losses.

2) Legal entities shall be deemed to be affiliated, provided that a legal entity having its registered office  
in

or actual administration in Germany (group parent) has continuously held, directly or indirectly, more than 50% of the voting rights and more than 50% of the rights in the share capital, ordinary share capital or share capital of one or more other domestic or foreign legal entities (group members) since the beginning of its financial year. A legal entity that is neither domiciled nor actually managed in Austria can only be a group parent for the purposes of paragraph 4, unless it maintains a registered branch in Austria to which the shares are economically attributable; in this case, the rights and obligations arising from group taxation apply to the domestic branch. Legal entities that have essentially ceased their activities can be neither group parent nor group member.

3) The application for the formation of a group of companies must designate the group parent and all group members to be included. It is not required that all related legal entities within the meaning of paragraph 2 become group members. The group parent and the group members must have a single fiscal year.

4) The amount of the relevant result of the group members shall be determined in accordance with the provisions of this Act for the determination of the taxable net income.

5) In the event of a reduction of the participation quota in a group member, the allocated and not yet offset losses of this group member are to be allocated to the taxable net income of the company for which the loss allocation has become effective for tax purposes in proportion to the reduction of the participation quota. This shall not apply

corresponding to the reduction of the shareholding in a Group member to which losses were attributed.

6) Insofar as a group member or the group parent can or could offset losses from previous years against its own taxable net income, the taxable net income of the company to which these losses were attributed in previous financial years shall be increased in accordance with paragraph 1, sentences 3 and 4 up to the amount of these losses insofar as they have not yet been offset in accordance with paragraph 5.

7) Attributed losses of a group member that is no longer a group member at the end of the group parent's fiscal year are to be allocated to the taxable net income of the company to which the loss is attributed.

taxation has become effective, insofar as they have not yet been offset in accordance with para. 5 or 6. At the time when the conditions for group taxation are no longer met, all allocated losses of the group members shall be added to the taxable net income of the company for which the loss allocation has become effective for tax purposes, insofar as they have not yet been offset in accordance with paragraph 5 or 6 or sentence 1.

8) Losses attributed to a group member which have not yet been offset in accordance with paras. 5, 6 or 7 shall be attributed to the taxable net income of this company, provided that this company is no longer a group member at the end of the fiscal year of the group parent. The taxable net income of the group parent shall be reduced by this amount.

9) The group parent must provide the tax authorities with annual proof that the conditions for subsequent taxation pursuant to paragraphs 5 to 8 are not met. Even if the conditions according to paragraphs 5 to 8 are not met, an allocation shall be made no later than five years after the loss has been offset.

10) The government shall regulate the details by ordinance.

Art. 59

*Special accounting provisions*

1) To the extent required by the tax-neutral application of special accounting rules, depreciation, write-downs, replacements, valuations due to reorganizations and tax-privileged provisions that are not included in the taxable net income according to these rules may also be taken into account for the determination of the taxable net income.

financial statements prepared in accordance with accounting standards.

2) The government regulates the conditions and scope of such write-offs, value adjustments and provisions as well as the taxpayers' obligations to cooperate.

Art. 60

*Tax-privileged provisions*

1) To the extent required by economic circumstances, the Government may, by ordinance, exempt from income tax, in whole or in part, tax-privileged reserves that are committed for the purpose of establishing job creation reserves and development and research funds.

2) The more detailed provisions concerning the purpose, use, administration and

The government regulates the control of tax-privileged reserves and their permissible amount and ratio to income by decree.

### 3. Tax calculation Art. 61

#### *Tax rate*

The income tax is 12.5% of the taxable net income.

#### Art. 62

#### *Minimum income tax*

1) Legal entities with unlimited or limited tax liability for which the tax is not settled by means of tax deduction at source (Art. 63a para. 3) are subject to a minimum income tax, which is owed irrespective of the duration of the tax liability in the respective tax year. This is fully creditable against the income tax.

2) The minimum income tax is 1,800 francs. The minimum income tax is payable as part of the assessment. For taxpayers who are not assessed, it is payable for one year in advance.

3) In the case of taxpayers whose purpose is directed exclusively to the operation of a business conducted in a commercial manner and whose

balance sheet total has not exceeded 500,000 francs on average over the last three financial years, the minimum income tax is not levied.

#### Art. 63

#### *Avoidance of double taxation*

Art. 22 shall apply accordingly.

### 3a. Tax deduction at source

#### Art. 63a

1) Income is subject to withholding tax in accordance with Art. 44(3)(d).

2) The basis of assessment of the tax deduction is the gross income from the remuneration.

3) The tax deduction shall amount to 12% of the income pursuant to para. 2. The tax deduction shall settle the income tax; subject to an assessment pursuant to para. 5.

4) Art. 27, 28 para. 2, 3 let. a and para. 4 as well as Art. 29 shall apply mutatis mutandis.

5) An ordinary assessment is made upon request. In the ordinary assessment, business-related expenses that are economically related to this income may be deducted. Art.

Section 16 (2) (c) shall apply mutatis mutandis.

#### 4. Private asset structures

##### Art. 64

###### *Requirements and taxation*

1) Private asset structures are all legal entities:

a) which, in the pursuit of their purpose, do not engage in any economic activity, in particular if they exclusively acquire, hold, manage and dispose of financial instruments pursuant to Art. 4 para. 1 item 10 of the Asset Management Act as well as participations in legal entities, liquid funds and bank account balances;

b) whose shares or units have not been publicly placed and are not traded on a stock exchange and whose ownership is reserved for the investors referred to in paragraph 3, or where no investors other than those referred to in paragraph 3 are beneficiaries;

c) who neither solicit shareholders and investors nor receive remuneration or reimbursement of costs from them or from third parties for their activities in accordance with subparagraph a; and

d) from whose articles of incorporation it follows that they are subject to the restrictions on private asset structures.

2) A private asset structure may hold participations within the meaning of subparagraph 1(a) only on condition that it or its shareholders or beneficiaries do not actually exercise control by directly or indirectly influencing the management of such companies.

3) An investor for the purposes of this article is:

a) a natural person acting within the scope of management of his private property;

b) an asset structure that acts exclusively in the interest of the private property of one or more natural persons; or

c) an intermediary acting for the account of investors referred to in subparagraph (a) or (b).

4) The taxpayer shall confirm the fulfillment of the requirements under paragraphs 1 to 3 to the tax administration at the time of establishment and thereafter in the event of significant changes. In the case of private asset structures established in accordance with the provisions of paras.

If a company or a partnership is required to have its annual financial statements audited by an auditor, this confirmation may be issued by the auditor.

5) After submission of the required confirmations in accordance with paragraph 4, the tax administration shall decide on the status as a private asset structure. The taxpayer may appeal against this decision within 30 days in accordance with Art. 117.

6) The tax administration is responsible for monitoring the status as a private asset structure. In particular, it is entitled and obligated to monitor compliance with the conditions set out in paragraphs 1 to 3.

7) The Government shall regulate the details, in particular the deadlines and the form for submitting the confirmation in accordance with paragraph 4, the procedure for carrying out inspections in accordance with paragraph 6 and the levying of fees, by ordinance.

8) Private asset structures are exclusively subject to the minimum income tax in accordance with Art. 62 paras. 1 and 2 and are not assessed.

5. Special property dedications without personality Art. 65

#### *Taxation*

1) Special property dedications without personality established under domestic law or whose place of actual administration is in Switzerland shall, subject to paragraph 2, be subject exclusively to the minimum income tax in accordance with Article 62, paragraphs 1 and 2, and shall not be assessed.

2) Special property dedications without personality, the domestic income of which is subject to limited taxation in accordance with Article 44, paragraph 2, shall be subject to the minimum income tax in accordance with Article 62, paragraphs 1 and 2.

### F. Foundation levy and levy on insurance premiums

#### 1. Foundation levy

##### Art. 66

#### *Subject and height*

1) In the case of the formation, establishment, transfer of the registered office to Switzerland or increase of the capital of legal entities pursuant to Art. 44, a formation tax in the amount of 1

% of the capital, applying a general exemption limit of one million francs. It is reduced for the capital exceeding five million francs

to 0.5 % and for capital exceeding ten million Swiss francs to 0.3 %. In each case, the capital determined in the Articles of Association shall be decisive. Paragraph 3 remains reserved.

2) The formation tax is also levied on the change of ownership of participation rights in legal entities that have been economically liquidated or converted into liquid form.

3) Foundations and property dedications without personality shall pay a foundation levy in the amount of 2 ‰ of the capital under para. 1, but not less than 200 francs.

2. Levy on insurance premiums Art. 67

*Principle*

Unless Swiss stamp legislation applies, a tax is levied on insurance premiums in accordance with the following provisions.

Art. 68

*Subject of the charge*

The subject of the levy is the premium payments based on an insurance relationship established by contract or otherwise, provided that the insured risk is located in the country.

Art. 69

*Exceptions*

Exempt from the levy are premium payments for:

- a) non-surrenderable life insurance policies and surrenderable life insurance policies with periodic premium payments. The government shall determine the necessary delimitations by ordinance;
- b) Life insurance policies, insofar as these serve the purpose of occupational pension provision within the meaning of the Occupational Pensions Act;
- c) Health and disability insurance;
- d) Accident insurance;
- e) Transport insurance for goods;
- f) Insurance for natural hazard damage to cultivated land and crops;
- g) Unemployment insurance;
- h) Hail Insurance;



- i) Livestock insurance;
- k) Reinsurance.

## Art. 70

*Duty to pay*

Insurance companies that conduct insurance business in Germany (insurers) are subject to the levy.

## Art. 71

*Levy rates and calculation basis*

- 1) The levy is 5% of the cash premium; for life insurance it is 2.5 % of the cash premium.
- 2) If the amount used to calculate the tax is in a foreign currency, it must be converted into Swiss francs at the time the tax claim arises.

## Art. 72

*Refund*

If the levying of the tax on insurance premiums violates Art. 46(2) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (EEA Collection of Acts and Decrees; Annex IX 7a.01) or Article 50(1) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (EEA Collection of Laws: Annex IX 11.01), the tax collected in this respect shall be refunded to the insurer.

## III. Municipal taxes

## A. Share of municipalities in state taxes

## Art. 73

Repealed

## Art. 74

*Income tax*

- 1) The municipality in which the legal entity has its registered office or place of business receives a share of 35% of the income tax, insofar as this exceeds the amount of the minimum income tax.
- 2) If the share of a municipality exceeds 25% of the sum of all municipal shares,

then the share of the municipality is reduced accordingly.

3) If the registered office and the place of business are located in different municipalities, the share shall be distributed among these municipalities, whereby the municipality in which the registered office is located shall receive a share of 20% in addition to any share pursuant to para. 4 above. However, if the legal entity does not develop any or any significant activities at its registered office, the share of the municipality where the registered office is located may be reduced or a share allocation may be waived.

4) If a permanent establishment of the same legal entity is located in more than one municipality, the permanent establishment percentage shall be calculated taking into account the assets located in each municipality or the workforce employed or on the basis of a size relevant to the industry concerned.

4a) In the case of a group of companies whose domestic companies are closely linked economically, the criteria for elimination under paras. 3 and 4 shall be applied to the consolidated values.

5) The tax administration shall determine the distribution among the municipalities in the cases under paras. 3 and 4. Upon request of a municipality affected by the distribution, the tax administration shall inform about the percentage amount of the seat municipality's share according to par. 3 as well as about the percentage distribution of the municipality's share among the affected municipalities according to par. 4.

#### B. Municipal surcharge on property and income tax Art. 75

##### *Basis*

1) In the case of unlimited taxpayers and limited taxpayers with an acquisition in accordance with Art. 6(5)(a), (b) and (g), a municipal surcharge shall be levied on the property and acquisition tax of the country, including the dedication tax in accordance with Art. 13.

2) No surcharge shall be levied in the case of tax deduction at source pursuant to Art. 25.

3) The amount of this surcharge shall be determined annually by the Municipal Council as a percentage of the state tax, but shall not be less than 150% and shall not exceed 250%.

4) The surcharge is levied together with the state tax.

#### Art. 76

##### *Control location*

The municipality responsible for receiving the municipal supplement is the one that

is responsible for the participation in the assessment and the payment of the land tax according to Art. 101.

#### Art. 77

##### *Division of the tax amount*

1) A division of the municipal allowance among several municipalities occurs if:

a) the taxpayer changes his residence in the course of the tax year, in which case the municipalities concerned shall share in the surcharge in proportion to the period of residence in the individual municipality, whereby residence in a municipality for less than three months shall not be considered;

b) the taxpayer does not have his residence and place of business (place of acquisition) in the same municipality, in which case the surcharge shall be divided according to the ratio between the acquisition pursuant to Art. 14, para. 2, subpara. I and the remaining acquisition. The part of the surcharge corresponding to the share of the acquisition pursuant to Art. 14, para. 2, subpara. I shall be allocated to the municipality of residence, and the part corresponding to the share of the remaining acquisition shall be allocated to the municipality in which the business operation or the place of acquisition is located;

c) the business of a taxpayer is located in the territory of more than one municipality, in which case the participating municipalities shall participate in the surcharge in proportion to the extent of the business in the individual municipalities;

d) a taxpayer has real property in a municipality other than the municipality of residence, in which case the municipality in which the real property is located, Entitlement to the part of the surcharge that is

The taxpayer shall be liable for the tax resulting from the ratio between the acquisition from these properties pursuant to Art. 14, para. 2, subpara. I and the total acquisition of the taxpayer.

2) If, in accordance with the above provisions, several municipalities have a share in the municipal surcharge of a taxpayer, the surcharge shall be drawn by the municipality entrusted with the collection of the state tax and distributed among the entitled municipalities. For the calculation of the surcharges, the surcharge rates of the entitled municipalities shall be decisive.

3) The Tax Administration shall decide on disputes between municipalities entitled to a share of the tax amount, subject to the right of appeal to the National Tax Commission.

IV. Organization and implementation

A. Organization

Art. 78

*Tax authorities and supervision*

- 1) Tax authorities within the meaning of this Act are:
  - a) the tax administration;
  - b) the municipal tax funds;
  - c) the state tax commission.
- 2) The government exercises supervision over the tax system.

Art. 79

*Tax Administration*

The enforcement of this Act shall be the responsibility of the Tax Administration, unless certain tasks are assigned to special authorities.

Art. 80

*Municipal Tax Fund*

1) In each municipality there is a Municipal Tax Board for participation in the implementation of the provisions on property and income tax.

The fund is administratively integrated into the organization of the municipality.

2) The municipal tax office is responsible for preparing the assessment of taxpayers subject to property and income tax. For this purpose, it shall, in particular, keep a tax register and record all facts relevant to the assessment and verify the self-declarations in the tax returns.

3) The Municipal Tax Office shall participate in the assessment of taxpayers subject to property and income tax by preparing proposals for the assessment.

4) The Tax Administration shall issue the necessary directives and guidelines within the scope of this Article.

Art. 81

*State Tax Commission*

- 1) The State Tax Commission is the appeal authority in tax matters and decides on appeals against decisions and rulings of the tax administration and the municipal tax offices.
- 2) The National Tax Commission is elected by Parliament for a four-year term. Its members must take an oath of office before the government.
- 3) The State Tax Commission consists of five members and three substitute members. The president and vice-president must be legally qualified and shall be appointed by the Diet. The National Tax Commission shall adopt its own rules of procedure.
- 4) Members of the government as well as employees of the tax administration and municipal tax offices are excluded from election to the National Tax Commission.
- 5) The provisions of the Act on the General Administration of the Province concerning recusal and responsibility shall apply to the members of the Provincial Tax Commission.

#### Art. 82

##### *Costs*

- 1) The costs of the tax administration and the Land Tax Commission shall be borne by the Land.
- 2) The costs of participation of municipal bodies in the implementation of the Tax Act shall be borne by the municipality.

#### B. General principles of procedure

##### 1. Official duties

#### Art. 83

##### *Official Secrets*

- 1) Persons entrusted with the enforcement of this Act or associated with it shall maintain secrecy about the business and private circumstances of taxpayers perceived in the course of their official activities and about the discussions in the tax authorities, and shall refuse to allow third parties to inspect official files.
- 2) Breach of official secrecy is permissible within the framework of administrative assistance (Art. 84) or the duty to report (Art. 85).

#### Art. 84

*Administrative assistance*

- 1) Tax authorities are obliged to provide each other with information free of charge.
- 2) The courts, the administrative authorities of the Land and of the municipalities, as well as the domestic public insurance institutions shall be obliged to provide the tax administration, upon request, with the information necessary for the implementation of this Act free of charge.
- 3) The tax authorities are obliged to provide the government, the courts, the heads of municipalities and domestic public insurance institutions with information on the circumstances of taxpayers to the extent necessary for official purposes of the requesting bodies.
- 4) The tax administration is only obliged to provide information to other administrative authorities if there is a special legal basis for this and this information is necessary for the official purposes of the requesting authorities.
- 5) Par. 4 also applies to information and personal data, including personal data on criminal convictions

and criminal offenses that are transmitted to the tax administration as the competent authority on the basis of international agreements, unless such agreements expressly provide otherwise.

Art. 85

*Duty of disclosure*

- 1) Courts, state and municipal administrative authorities, and domestic public insurance institutions shall immediately notify the tax administration of any violations of the provisions of this Act of which they become aware in the course of their official duties and which may lead or have led to an incomplete assessment. Professional secrets protected by law must be safeguarded.
- 2) The tax administration is obliged to immediately notify domestic public insurance institutions as well as administrative authorities of the state and the municipalities of violations of statutory provisions of which it has become aware in the exercise of its official function and which may lead or have led to an unjustified state support payment.
- 3) Par. 2 shall also apply to information and personal data, including personal data relating to criminal convictions and criminal offences, which are

be transmitted to the tax administration as the competent authority on the basis of international agreements, unless such agreements expressly provide otherwise.

#### Art. 86

##### *Processing and transmission of personal data*

1) The tax authorities may process personal data, including personal data on criminal convictions and criminal offenses, to the extent necessary for the performance of their duties under this Act. They may operate an information system for this purpose.

1a) The Tax Administration may process information and personal data, including personal data on criminal convictions and criminal offenses, which it receives as a competent authority on the basis of international agreements. It may operate an information system for this purpose.

2) The communication of personal data, including personal data relating to criminal convictions and criminal offences, within the meaning of Arts. 84 and 85 shall be made orally or in writing. If regular transmission is necessary, personal data, including personal data on criminal convictions and criminal offenses, may also be made accessible by means of a retrieval procedure.

3) The government shall regulate the details by ordinance.

#### 2. Procedural status of spouses Art. 87

##### *Spouses*

1) Spouses who are assessed jointly have the following procedural status:

a) They shall jointly exercise the procedural rights and duties of the taxpayer under this Act.

b) You must file a joint tax return and sign it jointly.

c) Appeals and other submissions shall be deemed to have been filed in time if one spouse acts within the time limit.

d) Notices from the tax authorities are addressed to the spouses jointly.

2) Spouses who are assessed separately exercise the rights and obligations under

(1)(a) to (c) separately; notifications shall be sent to both spouses.

### 3. Procedural rights of taxpayers Art. 88

#### *File inspection*

1) The taxpayers are entitled to inspect the documents they have submitted or signed. Jointly assessed spouses have a mutual right to inspect files.

2) The other documents concerning them shall be available for inspection by the taxpayers, provided that the investigation of the facts has been completed.

and insofar as public or private interests do not conflict with this.

3) If a taxpayer is refused access to a document, this may only be taken into account to the detriment of the taxpayer if the authority has informed him orally or in writing of the essential content of the matter and has also given him the opportunity to express his views and to designate rebuttals.

#### Art. 89

#### *Collection of evidence*

Evidence offered by the taxpayer shall be taken to the extent that it is suitable to establish the facts relevant to the assessment.

#### Art. 90

#### *Contractual representation*

Taxpayers may be represented before the tax authorities if personal participation is not necessary. The representative must identify himself to the authority by written power of attorney.

#### Art. 91

#### *Necessary representation*

1) The tax authorities may require a taxpayer resident or domiciled abroad to designate a representative in the country.

2) If the taxpayer does not designate a representative, service on him may be effected by public notice within the meaning of the Service of Documents Act. The same shall apply if the whereabouts of a taxpayer are unknown.

#### Art. 92

#### *Representation of children, guardians and persons to whom a guardian has been appointed.*

Children under parental guardianship shall be taken into care by the holder of parental



guardianship, persons under guardianship by the guardian and persons to whom a custodian has been appointed, shall be represented by such custodian to the extent that the custodian's scope of action includes representation in tax matters.

C. Assessment in the ordinary procedure

1. Procedural obligations

a) Tasks of the tax authorities

Art. 93

*Findings of fact*

- 1) Together with the taxpayer, the tax authorities shall determine the factual and legal circumstances that are decisive for complete and correct taxation.
- 2) In order to ascertain facts relevant to taxation, they may call in experts, conduct inspections, request information or certificates from the taxpayer in writing or orally, and inspect the taxpayer's books and records. Art. 97 para. 3 remains reserved.

StEG

Art. 93a

*Binding information and commitments*

- 1) The tax administration may, upon request, provide binding information on the tax assessment of a specific matter that is not yet known at the time of the request.
- 2) Upon request, the tax administration may issue binding assurances, following an audit of a verified fact, as to how a fact audited for the past will be treated for tax purposes in the future.
- 3) The Government shall regulate the details by ordinance, in particular the form, content and requirements of the application, the binding effect of the information or promise, as well as the fee for processing the application.

b) Obligations of taxpayers

Art. 94

*Tax return*

- 1) Taxpayers who are subject to property tax, acquisition tax or income tax shall be notified by public notice and by delivery of the following documents

of a tax form to submit the tax return. Failure to receive the form does not release the taxpayer from the tax obligation or the obligation to file a tax return. Taxpayers who do not receive a form must request it from the competent tax authority.

2) The taxpayer must complete the tax return truthfully and in full, sign it personally and submit it, together with the enclosures prescribed by ordinance, to the competent tax authority within the deadline.

3) The documents to be submitted in accordance with paragraph 2 must be in German. If further documents are required by the tax authorities and these are in another language, the tax authorities may require translations or arrange for translations at the taxpayer's expense.

4) The taxpayer who fails to submit the tax return or submits an inadequately completed tax return shall be requested to make up for the omitted information within a reasonable period of time.

Art. 95

*Filing the tax return*

1) The deadline for submitting the tax return is set annually by the tax administration.

2) Taxpayers moving abroad must submit their tax return before moving abroad.

3) The competent tax authority may extend the submission deadline for individual taxpayers upon written request.

4) The Government shall regulate by ordinance the conditions under which an extension of the deadline shall be granted.

Art. 96

*Duty of disclosure*

1) The tax return must indicate:

a) from the donor and the donee: gifts made or received by them during the tax year;

b) From the recipient of inheritances or legacies: Inheritances and bequests received during the tax year;

c) from the recipient of donations from foundations, foundation-like institutions or special property dedications: the donations received during the tax year.

2) The government regulates the minimum amount above which gifts, inheritances, legacies or donations must be reported.

Art. 97

*Further duties to cooperate*

- 1) Taxpayers must take all reasonable actions to enable a complete and accurate assessment.
- 2) At the request of the tax authority, they must in particular provide information orally or in writing and submit business books, receipts and other certificates as well as documents relating to business transactions.
- 3) The powers granted to the tax authorities are only available to them in respect of persons who are bound to secrecy by official or professional secrecy in respect of the affairs of third parties (attorney-client privilege, medical secrecy, bank secrecy, fiduciary secrecy, insurance secrecy and the like) to the extent that documents are concerned in connection with their ordinary business transactions. In these documents, personal data subject to professional secrecy may be made unrecognizable or replaced by codes. In cases of doubt, neutral auditors appointed by the President of the National Tax Commission shall be appointed as inspection bodies at the request of the tax administration or the taxpayer; the Government shall regulate the details of the assumption of costs by ordinance.
- 4) In the case of legal entities subject to tax, the members of the governing bodies shall be obliged to cooperate in the assessment of such legal entities in accordance with the preceding paragraphs.

Art. 98

*Electronic data exchange*

- 1) The government regulates the conditions for the electronic exchange of data between the taxpayer and the tax authorities by ordinance.
- 2) Instead of a personal signature, another form of signature may be permitted.
- c) Third-party certification and reporting obligation Art. 99

*Certification requirement*

- 1) Towards the taxpayer are obliged to issue certificates:

- a) Employers on their employee benefits using the official wage statement form;
  - a) Institutions for occupational retirement provision and pension funds on their benefits to pension recipients using the official pension certification form;
  - a) Insurance institutions, banks, institutions for occupational retirement provision and pension funds on their payments to unrestricted taxpayers due to the liquidation of vested benefit policies or blocked accounts that were set up in Switzerland using vested benefits from occupational retirement provision;
  - b) legal entities, companies without personality and special asset dedications on their benefits to domestic and foreign members of the administration, other bodies and beneficiaries;
  - c) Creditors and debtors on the existence, amount and interest of receivables;
  - d) insurers about the surrender value of insurance policies and about the benefits paid out or owed under the insurance relationship;
  - e) Companies without personality and special property dedications on all circumstances that are important for the assessment of the partners, the creator or the beneficiaries, in particular  
on their share in the acquisition and assets of the companies without personality or special asset dedication.
- 2) If the taxpayer fails to submit a certificate despite a reminder, the tax authority may demand it from the third party. The legally protected professional secrecy remains reserved.

Art. 100

*Reporting obligation*

- 1) The tax administration must be submitted each tax year in respect of unlimited taxpayers:
- a) of institutions for occupational retirement provision and pension funds a report on:
    - 1. the benefits provided to the beneficiaries or insured persons;
    - 2. payments made to insurance institutions and banks to set up a vested benefits policy or a blocked account using vested benefits from the company pension plan;

b) insurance institutions and banks to report on vested benefit policies and blocked accounts that are set up using vested benefits from the occupational pension plan:

1. the benefits paid to beneficiaries from the termination of vested benefit policies and blocked accounts;

2. the continuation of vested benefit policies and blocked accounts beyond the normal retirement age.

1a) The Tax Administration shall be notified of each tax year in respect of unlimited and limited taxpayers of companies without personality:

a) the name and place of residence of the shareholders;

b) the Company's financial statements without personality;

c) the shareholders' share in the company's assets and income without personality;

d) the existence of a domestic permanent establishment.

2) The deadline for submitting returns and notifications under paras. 1 and 1a shall be set annually by the Tax Administration.

3) Municipalities shall send a copy of the death record or inventory to the Tax Administration within 30 days of the date on which the death record or inventory is drawn up in accordance with the Non-Contentious Proceedings Act.

4) The district court shall send a copy of the certificate of inheritance to the tax administration within 30 days from the date of legal effect.

2. assessment procedure Art. 101

#### *Responsibility*

1) The assessment is made by the tax administration. The following shall cooperate in the assessment:

a) for taxable natural persons who have their domicile or habitual residence in the country, the municipal tax office of the municipality of residence or the municipality in which the taxpayer has his habitual residence;

b) for taxable natural persons who have neither domicile nor habitual residence in the country, the municipal tax office of that municipality,

1. in which the domestic assets are located in accordance with Article 6(4);

2. in which the real property or the permanent establishment is located in the case of an acquisition pursuant to Art. 6 par. 5 letters a and b;

3. in which the employer has its registered office in the case of an acquisition pursuant to Art. 6, para. 5, subpara. c;

4. in which the legal entity or special asset dedication has its registered office or actual administration in the case of an acquisition pursuant to Art. 6 par. 5 letter d;

5. in which the paying agent is domiciled in the case of an acquisition pursuant to Art. 6 Para. 5 Letters e and f;

c) for natural persons with unlimited tax liability within the meaning of Art. 6(1)(b), the municipal tax office of their home municipality or, if they do not have a home municipality in Switzerland, the municipal tax office at the employer's registered office.

2) If the place of assessment cannot be determined in accordance with subsection (1), in particular if the taxpayer's residence and business operations are not in the same municipality or if its business

If a company operates in several municipalities, the tax administration shall designate the municipality in which the assessment procedure is to take place.

#### Art. 102

##### *Implementation of the assessment*

1) The tax authorities examine the tax return and make the necessary investigations.

2) If the taxpayer has not submitted a tax return or if the tax assessment basis cannot be determined properly due to a lack of reliable and complete documents, the tax administration shall make the assessment at its discretion. In doing so, it may take into account empirical figures, asset developments and the taxpayer's living expenses.

#### Art. 103

##### *Assessment ruling*

1) The tax authorities determine the tax assessment basis, the tax rate and the tax amount in the assessment ruling.

2) The tax authority shall notify the taxpayer of any deviations from the tax return no later than when the assessment notice is served.

#### D. Other assessment procedures

##### 1. Real estate gains tax

#### Art. 104

##### *Assessment*

1) The land transfer authority shall send the contracts it has approved concerning

the acquisition of domestic real estate of the tax administration.

2) The transferor shall notify the Tax Administration in writing of any changes in economic ownership that do not require the approval of the Real Estate Transfer Authority within 30 days of the transfer.

3) The tax administration invites taxpayers to submit a tax return by sending them a tax form.

4) The tax administration assesses the real estate gains tax.

5) The provisions on the general principles of procedure and on the ordinary procedure shall apply *mutatis mutandis*.

## 2. Dedication taxation Art. 105

### *Assessment*

1) The transferor shall notify the Tax Administration in writing of any donation of property pursuant to Article 13 within 30 days of the donation.

2) The tax administration assesses the dedication tax.

3) The provisions on the general principles of procedure and on the ordinary procedure shall apply *mutatis mutandis*.

## 3. Foundation levy Art. 106

### *Assessment*

1) The Tax Administration must be notified of the formation, establishment, relocation of the registered office, increase in capital and changes of ownership pursuant to Art. 66.

2) The foundation tax is assessed by the tax administration.

3) Retrieved

## 4. Levy on insurance premiums

### Art. 107

#### *Fiscal Agent*

1) Insurers without a domestic permanent establishment within the meaning of Article 2(1)(a), first sentence, are obliged to appoint an authorized representative (fiscal representative), who must also be an authorized agent for service of process. The fiscal representative must fulfill the duties under tax law that are incumbent on the taxable person appointed by him.

insurer represented by him. He is authorized to exercise the rights to which the insurer he represents is entitled.

2) Only fiduciaries, auditors and lawyers domiciled or having their registered office in Liechtenstein as well as domestic insurance companies may be appointed as fiscal representatives.

3) The fiscal representative is liable for the payment of the levy.

Art. 108

*Duty to provide information*

1) Insurers, policyholders and fiscal representatives must provide the tax administration with information on all facts that may be of significance for the duty or for the calculation of the duty.

2) The insurer is obliged to notify the fiscal representative without delay of the conclusion of insurance contracts, stating all circumstances relevant to the levying of the tax on insurance premiums.

Art. 109

*Delivery*

1) The insurer must pay the tax to the tax administration within 30 days of the end of the half-year for the premiums collected in this period, separately for each insurance class, without being asked to do so.

2) In order to avoid disproportionate effort, the tax administration may permit a settlement procedure that deviates from paragraph 1.

Art. 110

*Instructions, orders and decisions*

The Tax Administration shall issue all directives, orders and decisions necessary for the collection of the levy on insurance premiums.

E. Tax claim

Art. 111

*Joint liability*

1) Spouses who are assessed jointly are jointly and severally liable to pay property and income tax for themselves and their minor children living with them in the same household. However, each spouse is liable to pay taxes only for his or her share of the total tax if one of them is insolvent.

2) In the case of spouses who are assessed separately, the joint and several liability shall also cease for



all outstanding tax liabilities.

3) With the taxpayer are jointly and severally liable:

a) for the tax liability of a legally or factually liquidated legal entity: the persons entrusted with the administration and liquidation up to the amount of the net assets or the liquidation result. The liability does not apply if the person concerned proves that he or she exercised all due care required by the circumstances;

b) for the tax liability of a legal entity or special asset dedication without personality that transfers its registered office or place of effective management without liquidation to territories outside the European Economic Area and Switzerland: its governing bodies or the persons acting on their behalf up to the amount of the net assets of the legal entity or special asset dedication without personality at the time of the transfer of the registered office or place of effective management. Liability shall not apply if the person concerned proves that it has exercised all due care required by the circumstances;

c) for the tax liability of the deceased: the persons entrusted with the distribution of the estate up to the amount of the pure estate assets;

d) for the tax liability of limited taxpayers: the persons entrusted with the liquidation of the assets giving rise to the tax liability, up to the amount of the net assets;

e) the minor children under the taxpayer's care up to the amount of the share of the total tax attributable to them.

4) Each jointly liable person is personally liable for the entire tax amount. They shall release the jointly liable persons by payment.

#### Art. 112

##### *Tax succession*

The heirs succeed to the decedent's tax rights and obligations upon the decedent's death.

#### Art. 113

##### *Origin and maturity of the tax claim*

1) The tax receivable arises at the time when the taxable event occurs.

2) Subject to the following provisions, the tax shall become due upon delivery of the assessment notice.

3) Subject to subsection 4(a), the income tax for legal entities shall be due on the date determined by the tax administration (general due date).

4) In any case, the tax is due:

a) on the date of incorporation as well as annually recurring on that date in the case of minimum income tax, provided that such tax is not assessed (Art. 64, paras. 8 and 65);

b) on the day the taxpayer leaves the country;

c) at the time determined in the tax assessment pursuant to Art. 34, in the case of tax by expenditure;

d) with the deletion of a taxable legal entity from the Commercial Register;

e) at the time when the limited taxpayer abandons its permanent establishments located in the country or its real estate located in the country;

f) in the event of bankruptcy proceedings being instituted against the taxpayer.

5) The due date remains unchanged, even if an objection or appeal has been filed against an assessment.

6) The insurance premium is due 30 days after the end of the half-year in which it was incurred. It arises with the payment of the premium.

#### Art. 114

##### *Payment of the tax claim and interest on arrears*

1) Unless otherwise stipulated in this Act, the tax must be paid within 30 days of the due date. Approved payment facilities pursuant to Art. 131 are reserved.

2) In case of departure of the taxpayer, the tax shall be paid not later than on the day of departure.

3) Interest on arrears shall be paid for tax amounts not paid on time. The obligation to pay interest shall commence upon expiry of the payment period under para. 1. The amount of the interest rate shall be determined by the Government by ordinance.

4) If, for reasons for which the debtor is not responsible, the debtor has not yet received an assessment order or a provisional invoice when the due date falls, the obligation to pay interest shall commence 30 days after the date on which the latter is served.

#### Art. 115

##### *Statute of limitations for assessments*

- 1) The right to assess a tax expires after five years. In the case of periodic taxes, the limitation period begins to run after the end of the tax year to which it relates, and in the case of non-periodic taxes, after the end of the tax year in which the taxable event occurred.
- 2) The statute of limitations does not begin or is suspended:
  - a) during appeal proceedings;
  - b) as long as the tax receivable is secured or deferred;
  - c) as long as the taxable person does not have a domicile or habitual residence in Germany;
  - d) as long as execution cannot be levied against the taxpayer in Germany; or
  - e) as long as criminal tax proceedings are being conducted with regard to the tax claim.
- 3) The limitation period is interrupted and the limitation period starts anew with:
  - a) Recognition of the tax claim by the taxpayer;
  - b) any action taken by the tax authorities, with the knowledge of the taxpayer, with a view to establishing the tax liability or asserting the tax claim; or
  - c) Submission of a request for tax abatement.
- 4) The right to assess a tax shall in any case be barred after ten years; subsection (1) sentence 2 shall apply *mutatis mutandis*.

#### F. Remedies Art. 116

##### *Appeal to the tax administration*

- 1) The taxpayer may lodge an objection with the tax administration against assessment rulings and other rulings within 30 days of notification.
- 2) The objection must be submitted in writing; it must contain the motions, the reasons for them with a statement of the evidence and the signature of the objector or his representative. If the objector is represented by a third party, the latter must prove his identity by means of a written power of attorney. The evidence must be specified in the statement of objection and enclosed with it.
- 3) The taxpayer may assert all deficiencies with the objection. The taxpayer may object to a discretionary assessment only on the grounds of obvious

The applicant may object to the incorrectness of the information.

4) If the formal requirements under para. 2 are met, the tax administration shall re-examine the matter and may amend the ruling in whole or in part. The taxpayer has the right to represent the objection in person before the tax administration. If the objection is directed against a detailed reasoned ruling, it shall be forwarded to the National Tax Commission as an appeal at the request or with the consent of the objector.

5) The costs of a decision rejecting an objection shall be borne by the objector. If he partially succeeds with his claims, the costs are to be reduced proportionately. The costs may be imposed on the successful opponent in whole or in part if he has unnecessarily condemned the objection proceedings.

6) Party and representation costs shall not be awarded in any case.

Art. 117

*Complaint to the National Tax Commission*

1) The taxpayer may lodge an appeal with the National Tax Commission against a decision of the Tax Administration to raise an objection within 30 days of notification.

2) The appeal must be submitted in writing; it must contain the motions, the reasons for them with a statement of the evidence and the signature of the appellant or his representative. If the appellant is represented by a third party, this third party must identify itself by means of a written power of attorney. The means of evidence shall be specified in the notice of appeal and enclosed with it.

3) The taxpayer may appeal against all deficiencies. The taxpayer may only appeal against a discretionary assessment or a discretionary decision on the grounds of obvious incorrectness. Evidence that has been withheld in the assessment or objection proceedings may no longer be collected or accepted.

4) The taxpayer's appeal against an objection decision shall be submitted to the tax administration for a counter-appeal. The taxpayer and the tax administration shall have the right to represent the appeal before the Regional Tax Commission in person. If the Regional Tax Commission exercises its powers under Art. 93 and the taxpayer refuses to comply with a request for information or for the production of books of account or other documents in order to establish material facts, the taxpayer shall be entitled to appeal to the Regional Tax Commission.

the complaint filed by the taxpayer shall be dismissed as unfounded, subject to any penalties.

5) Upon completion of the investigation, the National Tax Commission shall render its decision and notify it to the parties.

6) The costs of a dismissal shall be borne by the appellant. If the appellant is successful in part, the costs shall be reduced proportionately. The successful appellant may be ordered to pay the costs in whole or in part if he has caused the appeal proceedings unnecessarily.

7) Party and representation costs will not be awarded in any case.

8) In all other respects, the provisions of the Act on the General Administration of the State shall apply to the appeal procedure, unless otherwise provided for in this Act.

#### Art. 118

##### *Appeal to the Administrative Court*

1) An appeal against a decision of the State Tax Commission may be lodged within

An appeal may be lodged with the Administrative Court within 30 days of notification.

2) The taxpayer and the tax administration shall have the right of appeal. The taxpayer's appeal shall be submitted to the tax administration for counterstatements.

3) In an appeal to the Administrative Court, the complainant may assert violations of law and plead that the contested decision is based on facts that are contrary to the facts on file or incompletely established.

4) In all other respects, the provisions of the Act on the General Administration of the State shall apply to the appeal procedure, unless otherwise provided for in this Act.

G. Amendment of legally binding assessments Art. 119

##### *Principle*

Final assessments may be amended as provided in this section; no amendment of such assessments shall be made under the provisions of the General Land Administration Act.

*After tax*

Art. 120

*a) Prerequisite*

1) If, on the basis of facts or evidence of which the tax authority was not aware, it becomes apparent that an assessment has been wrongfully omitted or that a legally valid assessment is incomplete, the

tax that has not been levied, together with interest, as back tax. The amount of interest is governed by Art. 114, para. 3.

2) If the taxpayer has fully and accurately stated the components of the taxable performance and values in its tax return and if the assessment of the individual components has been recognized by the tax authorities, no additional tax may be levied even if the assessment was insufficient.

Art. 121

*b) Forfeiture*

1) The right to initiate subsequent tax proceedings expires after five years. In the case of periodic taxes, the period begins after the end of the tax year for which an assessment was wrongly omitted or a legally binding assessment is incomplete, and in the case of non-periodic taxes, after the end of the tax year in which the taxable event occurred.

2) Self-disclosure and the opening of criminal proceedings are simultaneously considered as the initiation of post-tax proceedings.

3) The right to assess a subsequent tax shall expire in any case after ten years; para. 1 sentence 2 shall apply *mutatis mutandis*.

Art. 122

*c) Procedure in case of death of the taxpayer*

Post-tax proceedings that have not yet been initiated or completed at the time of the taxpayer's death shall be initiated or continued against the dormant estate or heirs.

Art. 123

*Revision*

1) A final order or decision may be revised in favor of the taxpayer upon application or *am- tus* if:

- a) Significant facts or crucial evidence are discovered; or
  - b) the adjudicating authority has failed to disclose material facts or decisive evidence of which it was aware or should have been aware, except for disregarded or otherwise violated essential procedural principles.
- 2) An appeal shall be excluded if the applicant raises a ground for appeal which he could have raised in the ordinary proceedings if he had exercised reasonable diligence.
- 3) The request for revision must be filed within 90 days after discovery of the grounds for revision, but at the latest within ten years after service of the order or decision.
- 4) The request for revision must be submitted in writing to the authority that issued the earlier order or decision. The request for revision must contain:
- a) the exact designation of the individual grounds for revision; and
  - b) a request to what extent the previous order or decision is to be set aside and how it is to be decided anew.
- 5) The evidence for the grounds for appeal shall be attached to the appeal request.
- 6) The same appeals may be lodged against the rejection of a request for revision and against the new order or decision as against the earlier order or decision. The procedure shall be governed by the rules applicable before the competent authority.

#### Art. 124

##### *Mutual agreement and arbitration award*

- 1) An assessment ruling shall be issued, revoked or amended to the extent necessary to implement a mutual agreement or an arbitral award under an international tax treaty.
- 2) The right to issue an assessment order or to file a petition to modify or rescind an assessment order expires 90 days after the date of the plea agreement or arbitration award, but no later than ten years after service of the order or decision.

#### Art. 125

##### *Correction of billing errors and clerical mistakes*

- 1) Accounting errors and clerical errors in legally binding rulings and decisions may be corrected by the authority that made them within a period of five years from the date of service, either at the request of the taxpayer or ex officio.
- 2) The correction or its rejection may be appealed in the same manner as the previous order or decision.

H. Withdrawal and safeguarding of taxes Art. 126

*General*

- 1) The property and income taxes are collected by the municipal tax offices, the other taxes are collected by the tax administration. The tax administration annually determines the amount up to which minor taxes and interest on arrears are not levied or are refunded.
- 2) The authority entrusted with the collection of taxes shall ensure the collection of taxes, back taxes, fines, interest and costs by issuing invoices, reminders and enforced collection.

Art. 127

*Provisional and definitive reference*

- 1) Subject to para. 2, the national taxes shall be drawn in accordance with the assessment.
- 2) The income tax for legal entities, with the exception of the minimum income tax pursuant to Art. 64 Para. 8 and Art. 65, is provisionally collected. The basis for this is the tax return, the last legally binding assessment or the presumably owed tax amount. After the tax return has been checked, it is assessed and collected definitively.
- 3) The provisional invoice shall constitute an execution title within the meaning of the Execution Order.
- 4) Taxes paid provisionally will be credited against the taxes due according to the (definitive) assessment. Underpaid amounts will be reclaimed, overpaid amounts will be refunded.
- 5) The procedure concerning provisional withdrawal and the extent to which interest is paid on the amounts pursuant to para. 4 shall be regulated by the Government by ordinance.

*Statute of limitations*

Art. 128

*a) Principle*

- 1) Tax claims become statute-barred five years after the assessment has become legally binding



has become.

- 2) Suspension and interruption of the limitation period shall be governed by Art. 115.
- 3) In any case, the statute of limitations shall run ten years after the end of the year in which the taxes were legally assessed.

Art. 129

*b) Levy on insurance premiums*

- 1) The levy on the insurance premium expires five years after the end of the calendar year in which the premium was paid.
- 2) Suspension and interruption of the limitation period shall be governed by Art. 115.
- 3) Inhibition and interruption are effective against all debtors.
- 4) In any event, the statute of limitations shall run ten years after the end of the year in which the premium payment was made.

Art. 130

*Recovery of paid taxes*

- 1) The taxpayer may reclaim a tax amount paid by him if he has mistakenly paid a tax that is not due in whole or in part.
- 2) Tax amounts to be refunded, if more than 30 days have elapsed since the payment, shall be refunded with interest from the date of payment. The amount of the interest rate shall be determined by the Government by decree.
- 3) The claim for reimbursement must be asserted within five years of the end of the calendar year in which the payment was made.

Art. 131

*Payment facilitation*

- 1) If the timely payment of taxes, back taxes, interest, costs or fines means a considerable hardship, the reference authority may, upon request, grant a deferral, payment in arrears or other payment relief.
- 2) Payment facilities granted are to be revoked if their preconditions cease to apply or the conditions attached to them are not met.

Art. 132

*Tax rebate*

- 1) Taxes, back taxes, interest, costs or fines owed may be paid in full or in part.

or partially waived if the payment thereof would cause unreasonable hardship for the party liable to pay.

2) The request for a tax reduction shall be addressed to the tax administration. Before making its decision, the tax administration shall obtain the opinion of those municipalities whose interests are affected by the request.

3) In the event of total or partial rejection of the application, the applicant may lodge an appeal with the government within 30 days of notification of the decision.

Art. 133

*Control fuse*

1) The provisions of the Execution Code on the safeguarding of rights shall apply to the safeguarding of taxes, unless otherwise provided in the following paragraphs.

2) In urgent cases, the tax authorities may order and implement provisional protective measures. The opposing party must be issued with a confirmation of any protective measures imposed.

3) If a tax authority has ordered provisional protective measures in an urgent case, it must apply to the district court for the issuance of a protective order within eight days of the implementation of the provisional protective measures, failing which the provisional protective measures shall cease to be valid.

4) It is not necessary to establish the credibility of the claim and the risk in order for a security bid to be approved. The granting of a protective order may not be made dependent on the provision of security.

Art. 133a

*Deletion from the Commercial Register*

A legal entity, a partnership or a special asset dedication may only be deleted from the commercial register if the tax administration has notified the Office of Justice that all taxes owed have been paid. Deletions on the basis of a court or administrative order or ex officio by the Office of Justice are reserved.

Art. 134

*Land register entry*

1) A transfer of ownership of real property may be recorded in the land register only

if proof of payment of the taxes resulting from the transfer is provided.

2) If sufficient other securities are provided for the payment of these taxes, the tax administration may grant exceptions.

3) If the transfer of ownership takes place within the framework of a compulsory auction procedure or a public or voluntary auction procedure, the taxes resulting from the transfer are to be paid in advance from the highest bid or auction proceeds.

## V. Penal provisions

### A. Transgressions

#### 1. Violation of procedural obligations and risk of levy

##### Art. 135

###### *Violation of procedural obligations*

Any person who, despite being warned, wilfully or negligently fails to comply or fails to comply properly with an obligation incumbent upon him under the provisions of this Act or the ordinances issued thereunder, or under an order imposed by the competent tax authority on the basis of this Act, shall be liable to a fine of up to 1,000 francs for an infringement, and in serious cases or in the event of a repeat offence to a fine of up to 10,000 francs.

##### Art. 136

###### *Discharge hazard*

A person shall be punished by a fine of up to 20,000 francs who, without having committed an offense under Art. 137 or 140, intentionally or negligently jeopardizes the collection of the foundation levy or the levy on insurance premiums in accordance with the law by:

- a) fails to comply with the obligation to file tax returns, statements and accounts, to provide information and to submit books of account, registers and supporting documents;
- b) makes any untrue statement or conceals any material fact in any tax return, statement or accounting, or in so doing furnishes any untrue evidence of material fact;
- c) provided incorrect information;
- d) hinders, obstructs or impedes the proper execution of a control or

impossible.

2. Tax evasion Art. 137

*Tax evasion*

1) For violation shall be punished by fine who:

a) as a taxpayer, intentionally or negligently prevents the collection of a tax payable by him or otherwise culpably withholds taxes by providing incorrect or incomplete information in the tax return or tax notices or by providing incorrect or incomplete information;

b) as a person obliged to withhold tax at source, intentionally or negligently fails to withhold tax or withhold tax incompletely;

c) intentionally or negligently, for his own benefit or for the benefit of another, withholds green fees or levies on insurance premiums;

d) as a taxpayer or as a person obliged to deduct tax at source, intentionally or negligently obtains an unlawful refund or an unjustified remission.

2) As a rule, the fine amounts to one times the evaded tax or duty. It may be reduced by up to one third in the case of slight culpability and increased by up to three times in the case of serious culpability.

Art. 138

*Try*

1) Attempting to evade taxes is punishable by law.

2) The fine shall be two-thirds of the fine that would be imposed in case of completed and intentional tax evasion.

Art. 139

*Involved*

1) Any person who intentionally causes another person to commit tax evasion or who otherwise intentionally contributes to its execution shall be liable to a fine, regardless of the criminal liability of the taxpayer.

2) The fine is up to 10,000 Swiss francs, in serious cases or in case of recurrence up to 50,000 Swiss francs.

B. Misdemeanor

Art. 140

*Tax fraud*

A person who commits tax evasion by willful use of false, falsified, untrue in content books of account or other documents shall be punished for a misdemeanor by imprisonment for a term not exceeding six months or a fine not exceeding 360 daily rates.

Art. 141

*Misappropriation of taxes to be deducted at source*

A person who is obliged to deduct taxes at source and uses deducted taxes for his own or another's benefit shall be punished for a misdemeanor by imprisonment of up to six months or a fine of up to 360 daily rates.

C. Common provisions Art. 142

*Self-disclosure*

- 1) If a taxpayer reports for the first time after January 1, 2011 a tax fraud, tax evasion or embezzlement of taxes to be deducted at source committed by him or her, or a tax fraud committed by him or her on his or her own initiative, without being prompted to do so by an imminent risk of discovery, he or she is exempt from punishment and is only required to pay the additional tax.
- 2) For each additional voluntary declaration of tax evasion, the fine is reduced to one fifth of the evaded tax. In addition, the subsequent tax is to be paid.
- 3) If a party (Art. 139) reports a punishable act under para. 1 on his own initiative without being prompted to do so by an imminent danger of discovery, he shall be exempt from punishment.
- 4) If heirs have done everything reasonable on their own initiative to enable the tax authorities to establish the existence of a criminal act under para. 1, they shall be exempt from punishment and shall only be required to pay the additional tax.

Art. 143

*Responsibility for legal entities*

- 1) If criminal acts under Articles 135 to 137 are committed with effect for a legal person, or if there is an attempt to commit a criminal act under Article 137, the legal person shall be fined.
- 2) If acts of participation (Art. 139) in tax evasion (Art. 137) of third parties are committed in the business operations of a legal entity, Art. 139 shall apply to the legal entity.

- 3) The acting organs are liable for the imposed fines if the fine is not paid by the legal entity.
- 4) In the case of offenses under Articles 140 and 141, the acting organ shall be punished.

Art. 144

*Liability in cases of representation*

If, in cases of representation, a legal or officially or legally appointed representative commits an offence under this Act in the course of his or her activities on behalf of the representative, the representative is liable to pay the fine or penalty. He may be exempted from this obligation only if he proves that he could not have prevented the acts of the representative and their effects. The representative is subject to the provisions of Articles 135 to 141.

Art. 145

*Limitation*

- 1) Prosecution and execution of sentences are subject to the statute of limitations:
  - a) in the case of violation of procedural obligations and in the case of risk of levy in one year;
  - b) for tax evasion, tax fraud and embezzlement of taxes deducted at source in five years.
- 2) The statute of limitations for criminal prosecution shall commence after the end of the year in which the violation of the law was last committed. It is suspended as long as the offender is abroad. The statute of limitations shall be interrupted by any investigative act of the competent authority directed against the offender. After each interruption, the statute of limitations begins to run.  
period of limitation anew. The original limitation period can no longer be doubled.
- 3) The statute of limitations for the execution of a sentence begins with the final conclusion of the criminal proceedings. It is suspended as long as the sentence cannot be executed in Germany. The statute of limitations for the execution of the sentence shall be interrupted by any enforcement action of the competent authority directed against the convicted person. After each interruption, the limitation period begins anew. The original limitation period may not be more than doubled.

Art. 146

*Conditional penalties*

Conditional punishment is excluded in the case of fines.

Art. 147

*Distribution of fines and penalties*

- 1) The fines imposed by the competent municipal tax office shall fall to the municipality concerned and shall be collected by it.
  - 2) All other fines and penalties accrue to the country.
- D. Criminal proceedings Art. 148

*Responsibilities*

- 1) The violation of procedural obligations shall be prosecuted by the tax authority against which it was committed.
- 2) The tax administration will prosecute tax evasion or tax jeopardy.
- 3) Prosecution of a tax fraud or misappropriation of taxes to be deducted at source falls under the jurisdiction of the district court.

Art. 149

*Procedure in case of violation of procedural obligations and risk of levy*

- 1) In proceedings for breach of procedural obligations and danger of levy, the tax administration and the municipal tax office may, if the legal situation is clear, proceed by means of an administrative penalty. In the absence of provisions to the contrary in this Act, Articles 147 to 149 of the Act on the General Administration of the Province shall apply *mutatis mutandis*.
- 2) In other cases, the procedure shall be governed by Articles 152 to 159 of the General National Administration Act, *mutatis mutandis*, unless otherwise provided for in this Act.

Art. 150

*Procedure for tax evasion*

- 1) In proceedings for tax evasion, unless otherwise provided for in this Act, Articles 152 to 159 of the General National Administration Act shall apply *mutatis mutandis*.
- 2) The person affected by the proceedings shall be given the opportunity to comment on the accusation against him/her; he/she shall be informed of his/her right to refuse to testify and to cooperate.

- 3) Evidence from post-tax proceedings may only be used in criminal proceedings if it was neither obtained under threat of a discretionary assessment with reversal of the burden of proof pursuant to Art. 102 nor under threat of a fine for breach of procedural obligations.
- 4) Professional secrecy must be maintained.

Art. 151

*Appeal procedure*

- 1) Administrative penalty decisions of the Tax Administration may be appealed to the National Tax Commission within 14 days of notification.
- 2) Appeals against administrative penalties imposed by the tax administration or the municipal tax office may be lodged within 14 days of notification (Art. 149 LVG).  
be lodged with the tax administration. If a fine of up to 2,000 francs is imposed in an administrative penalty order, only an appeal in accordance with paragraph 1 is admissible instead of an objection.
- 3) Appeals against decisions of the National Tax Commission may be lodged with the Administrative Court within 14 days of notification.

Art. 152

*Criminal provisions*

Proceedings for tax fraud or misappropriation of taxes to be deducted at source shall be governed by the provisions on criminal proceedings.

VI. Transitional and final provisions Art.

153

*Executive Orders*

The Government shall issue the regulations necessary for the implementation of this Act.

Art. 154

*Pending proceedings*

Post-tax and criminal proceedings already pending at the time of the entry into force of this Act shall be conducted in accordance with the provisions of the law previously in force.



leads. If the application of the new law would lead to a more lenient punishment, it shall be applied.

Art. 155

*State Tax Commission*

The present members of the National Tax Commission shall remain in office after the entry into force of this Act until the expiry of their term of office.

Art. 156

*Simplified procedure for voluntary disclosure*

In the case of persons who are subject to taxation in accordance with Art. 6 et seq. of this Act or Art. 31 et seq. of the previous Act, and who have been taxed in the period from

1 January 2014 to 31 December 2014 make a voluntary declaration within the meaning of Art. 142, an additional tax in the form of a flat rate of 2.5% plus a municipal tax surcharge shall be levied on all undeclared assets as at 1 January 2013 instead of the additional tax pursuant to Art. 142 para. 1.

Art. 157

*Repeal of previous law*

It is repealed:

1. Act of January 30, 1961, on State and Local Taxes (Tax Act), LGBl. 1961 No. 7;
2. Law of 30 January 1962 on the amendment of Article 118 of the Tax Act, LGBl. 1962 No. 5;
3. Law of June 4, 1963, concerning the amendment of the Tax Act, LGBl. 1963 No. 19;
4. Act of December 10, 1965, concerning the amendment of the Tax Act, LGBl. 1966 No. 4;
5. Act of December 29, 1966, on the Amendment and Supplementation of the Tax Act (Introduction of a Coupon Tax), LGBl. 1966 No. 31;
6. Law of 21 December 1968 concerning the amendment of the Tax Act, LGBl. 1969 No.7;
7. Act of December 22, 1969, concerning the amendment of the Tax Act, LGBl. 1970 No. 5;

8. Law of March 1, 1970, on the Amendment of the Law on Land and Municipal Taxes, LGBl. 1970 No. 18;
9. Act of December 17, 1970, concerning the amendment of the Tax Act, LGBl. 1971 No. 9;
10. Act of December 13, 1973, concerning the amendment of the Tax Act, LGBl. 1974 No. 10;
11. Announcement of 5 October 1999 on the correction of the Provincial Law Gazette 1974 No. 10, LGBl. 1999 No. 191;
12. Act of December 22, 1975, concerning the amendment of the Tax Act, LGBl. 1976 No. 8;
13. Act of December 20, 1976, concerning the amendment of the Tax Act, LGBl. 1977 No. 12;
14. Act of April 4, 1979, concerning the amendment of the Tax Act, LGBl. 1979 No. 23;
15. Act of April 15, 1980, on the Amendment of the Act on Provincial and Municipal Taxes (Tax Act), LGBl. 1980 No. 41;
16. Act of December 18, 1980, on the Amendment of the Tax Act, LGBl. 1981 No. 10;
17. Act of 12 June 1985 concerning the creation of a law on the amendment of the Tax Act, LGBl. 1985 No. 47;
18. Act of July 3, 1985, concerning the amendment of the Tax Act, LGBl. 1985 No. 51;
19. Law of June 24, 1987, on the Amendment of the Law on Local and District Taxes (Tax Law), LGBl. 1987 No. 34;
20. Act of June 24, 1987, concerning the amendment of the Tax Act, LGBl. 1987 No. 39;
21. Act of November 11, 1987, on the Amendment of the Act on Provincial and Municipal Taxes (Tax Act), LGBl. 1987 No. 66;
22. Act of November 11, 1987, on the Amendment of the Act on Provincial and Municipal Taxes (Tax Act), LGBl. 1987 No. 67;
23. Act of 27 June 1990 concerning the amendment of the Tax Act, LGBl. 1990 No. 50;
24. Law of 12 September 1990 on the amendment of the Tax Code,

LGBl. 1990 No. 54;

25. Announcement of 12 July 1994 of the repeal of Art. 16, para. 1 and Art. 34, para. 1 of the Tax Act by the decision of the Liechtenstein Constitutional Court of 26 May 1994 (StGH 1994/ 6), LGBl. 1994 No. 60;

26. Act of March 22, 1995, concerning the amendment of the Tax Act, LGBl. 1995 No. 103;

27. Act of September 13, 1995, concerning the amendment of the Tax Act, LGBl. 1995 No. 205;

28. Act of May 3, 1996, on the Amendment of the Tax Act, LGBl. 1996 No. 88;

29. Act of 30 October 1996 concerning the amendment of the Tax Act, LGBl. 1997 No. 17;

30. Act of 30 October 1996 on the amendment of the Tax Act, LGBl. 1997 No. 20;

31. Act of 30 October 1996 on the amendment of the Tax Act, LGBl. 1997 No. 22;

32. Act of 18 December 1997 on the amendment of the Tax Act, LGBl. 1998 No. 36;

33. Announcement of 6 October 1998 of the repeal of provisions of the Law on the State Court and of the Tax Law by the decision of the Princely Liechtenstein State Court of 30 January 1998 (StGH 1997/25), LGBl. 1998 No. 166;

34. Act of 22 October 1998 concerning the amendment of the Tax Act, LGBl. 1998 No. 218;

35. Act of 12 May 2004 on the amendment of the Tax Act, LGBl. 2004 No. 142;

36. Act of 19 October 2005 on the Amendment of the Act on Provincial and Municipal Taxes (Tax Act), LGBl. 2005 No. 247;

37. Announcement of 10 January 2006 of the repeal of Article 37 (1), second sentence, and (2), second sentence, of the Tax Act by the decision of the Liechtenstein Court of Justice of 28 November 2005 (StGH 2004/74), LGBl. 2006 No. 1;

38. Act of May 17, 2006, on the Amendment of the Act on Local and District Taxes (Tax Act), LGBl. 2006 No. 130;
39. Act of 22 June 2006 on the Amendment of the Act on Local and District Taxes (Tax Act), LGBl. 2006 No. 279;
40. Act of 24 October 2007 on the Amendment of the Act on Provincial and Municipal Taxes (Tax Act), LGBl. 2007 No. 332;
41. Act of 24 October 2007 on the amendment of the Tax Act, LGBl. 2007 No. 338;
42. Act of 24 April 2008 on the Amendment of the Act on Provincial and Municipal Taxes (Tax Act), LGBl. 2008 No. 149;
43. Act of March 16, 2010 on the Amendment of the Tax Act, LGBl. 2010. No. 139;
44. Act of June 30, 2010 on the Amendment of the Tax Act, LGBl. 2010. No. 239.

Art. 158

*Continuation of previous law*

- 1) The provisions on coupon tax under Articles 88a to 88p, 144a, 146a, 151 para. 3 and Article 152 para. 1 of the previous law shall continue to apply to old reserves.
- 2) Old reserves are deemed to be the stock of equity capital on the effective date of this Act that does not consist of paid-in share capital, common stock or share capital and to which Art. 88d or 88e of the previous law were applicable. For open and hidden profit distributions, old reserves shall be deemed to have been used first; the stock of old reserves shall be updated accordingly.
- 3) On old reserves still existing at the time of the amendment of the law of September 4, 2014, a coupon tax shall be levied until December 31, 2015, even without a distribution, in accordance with paragraph 4.
- 4) The tax rate of the coupon tax for the years 2014 and 2015 is 2.5 % in deviation from Art. 88h of the previous law.
- 5) Liquidations of legal entities completed by June 30, 2011, which were subject to tax under Articles 73 to 81 of the previous law before January 1, 2011, shall be taxed in accordance with the previous law.
- 6) In the case of legal entities and trust enterprises which were subject to the

If a legal entity and its beneficiaries have been subject to tax in accordance with Article 31(1)(c) of the previous law, they shall be taxed for the following three years in accordance with the previous law. Upon request, these legal entities shall be taxed before the expiry of this period in accordance with Articles 44 to 65 of this Act.

7) Articles 82bis and 83 to 85 as well as 88 of the previous law shall remain in force for a further three years in the case of legal entities and special property dedications which, before the entry into force of Article 64 of this Act, fulfilled the requirements of Articles 83 and 84 of the previous law.

applicable, whereby the minimum amount according to Art. 83 Para. 1 or Art. 84 Para. 4 of the previous law is 1,200 francs. The minimum amount is due irrespective of the duration of the tax liability in the respective tax year. Upon request, these legal entities shall be taxed before the expiry of this period in accordance with Articles 44 to 65 of this Act.

8) In the case of legal entities that were subject to tax under Article 31(1)(c) of the previous law before the entry into force of Article 64 of this Act, or were subject to tax under Articles 83 and 84 of the previous law before that date, Article 64(1)(d) of this Act shall be deemed to have been fulfilled if the articles of association of these legal entities exclude a commercial operation and these legal entities meet the other requirements of Article 64 of this Act.

9) Losses that can be carried forward on the day before the entry into force of this Act shall remain so after the entry into force of this Act. This shall not apply in the event of a change of taxation method within the meaning of paragraphs 6 or 7.

10) Art. 101 of the previous law shall remain applicable until the entry into force of the Disputes Act.

#### Art. 159

##### *Taxation of legal entities that are subject to the previous wealth and income taxes*

1) If a legal entity that is subject to wealth and income tax under Article 31, paragraph 1, subparagraph c of the previous law is taxed in accordance with Articles 44 to 65 of this Act, it shall pay a tax applying Article 13 mutatis mutandis if:

- a) Benefits do not become subject to property tax; and
  - b) there is no opting in within the meaning of Art. 9 Para. 3.
- 2) The gift tax paid on the contribution of the assets to the legal entity is deducted.

Art. 160

*Entry into force*

1) Subject to paras. 2 and 3 and to the unused expiry of the referendum period, this Act shall enter into force on 1 January 2011, otherwise on the day of its promulgation.

2) It applies for the first time:

a) the provisions on property and acquisition tax for the property and acquisition tax to be assessed in 2011;

b) the provisions on tax deduction at source subject to subparagraph (c) for tax deductions to be withheld in 2011;

c) the provisions on domestic acquisition under Art. 6(5)(e) and tax deduction at source under Art. 24(2)(c) for tax deductions to be withheld in 2012;

d) the income tax provisions for the 2011 income tax to be assessed;

e) the provisions on real property gains tax for real property gains realized in 2011;

f) the provisions on the formation tax for formations, establishments, transfers of registered offices within the country, capital increases and changes of ownership of shareholdings that take place in 2011;

g) the provisions on taxation on the basis of expenses for applications submitted from 2011 onwards;

h) the provisions on the levy on insurance premiums for premiums paid in 2011.

3) The provisions on private property structures under Art. 64 shall enter into force as soon as they are qualified by the EFTA Surveillance Authority (ESA) as being in conformity with the State aid regulations under Art. 61 of the EEA Agreement, at the earliest on the date determined in accordance with para. 1 above. The Government shall announce the date of entry into force in the National Gazette.

## **XV. Foundation Law Ordinance**

from march 24, 2009

### **I. General provisions Art. 1**

#### *Subject*

This regulation governs:

- a) the exercise of the power of audit by the foundation supervisory authority pursuant to Art. 552 § 21 PGR;
- b) the conditions for exemption from the obligation to appoint an auditor pursuant to Art. 552 § 27 par. 5 PGR;
- c) the exercise of supervision according to art. 552 § 29 PGR;
- d) the fees and costs for the activities of the foundation supervisory authority.

#### **Art. 2**

#### *Designations*

The personal and professional terms used in this Ordinance shall be understood to mean members of the female and male genders.

### **II. Exercise of audit authority**

#### **Art. 3**

- 1) The foundation supervisory authority shall examine the correctness of the contents of the notifications of formation and amendments at its due discretion and shall use the controlling body of the foundation for this purpose in accordance with Art. 552 § 11 para. 2 PGR or a third party commissioned by the foundation supervisory authority.
- 2) The Board of Trustees may submit two proposals to the Supervisory Authority for the appointment of a third party. As a rule, the foundation supervisory authority shall commission the preferred third party with the audit pursuant to para. 1.
- 3) If the examination reveals indications that the notification of formation or amendment is incorrect, copies and transcripts of the files shall be made and handed over to the foundation supervisory authority. On the basis of the documents, the supervisory authority shall take the appropriate measures in accordance with Art. 552 § Section 21 (3) of the PGR and to file a complaint with the court pursuant to Section 66c of the SchIT.

PGR to report.

III. Exemption from the obligation to appoint an auditor Art. 4

*Principle*

- 1) In the cases referred to in Articles 5 and 6, the foundation supervisory authority may, upon application, exempt public benefit foundations from the obligation to appoint an auditor.  
pursuant to Art. 552 § 27 par. 5 PGR.
- 2) If the obligation to appoint an auditor has been waived, the foundation supervisory authority shall as a rule exercise the right of inspection itself.

Art. 5

*Exemption due to small assets and non-publicity of fundraising.*

- 1) At the request of the foundation board, the foundation supervisory authority may exempt a non-profit foundation from the obligation to appoint an auditor if:
  - a) the foundation's assets are less than 750,000 Swiss francs; and
  - b) the foundation does not publicly solicit donations or other contributions or carry on a business conducted in a commercial manner.
- 2) The foundation supervisory authority shall revoke the exemption if:
  - a) the requirements pursuant to para. 1 are no longer met; or
  - b) this is necessary for a reliable assessment of the Foundation's financial position.

Art. 6

*Exemption due to other reasons*

- 1) At the request of the foundation board, the foundation supervisory authority may also exempt a foundation from the obligation to appoint an auditor for other reasons if this appears expedient.
- 2) A reason for exemption under para. 1 exists in particular if the charitable foundation:
  - a) Catholic purposes and the ongoing supervision of the appropriate administration and use of the foundation's assets is carried out by the regional church. In its application for exemption from the auditor's duty, the foundation board must prove that the foundation:
    1. is designated as an ecclesiastical foundation according to the founder's will;



2. is subject to ecclesiastical supervision in accordance with the foundation deed; and
  3. has been accepted by the competent ecclesiastical foundation supervisory bodies;
- b) pursues an investment policy and type of use of funds which allows for a supervision by the foundation supervisory authority. The foundation supervisory authority may issue implementing regulations in this regard.
- 3) The foundation supervisory authority shall revoke the exemption if the prerequisites pursuant to paras. 1 and 2 are no longer met.

IV. Supervi  
sion Art.

7

*Principle*

The Foundation Supervisory Authority shall perform the duties assigned to it by law as a supervisory authority over non-profit foundations as well as over foundations that are subject to supervision by a provision of the foundation deed, in particular by:

- a) takes a position as a party in legal care proceedings concerning the appointment of a recognized auditor;
- b) on the basis of the annual audit report of the auditors and any other information obtained by the auditors, ensures the appropriate management and use of the assets of the foundation by applying to the judge in the legal welfare proceedings for the necessary orders;
- c) takes a position as a party in legal care proceedings in the case of an order of necessary measures applied for by foundation participants before the judge in accordance with Art. 552 § 29 par. 3 PGR;
- d) takes a position as a party in legal care proceedings in the event of an amendment of the purpose of the foundation or other contents of the foundation deed or the supplementary foundation deed applied for by the foundation participants before the judge.

Art. 8

*Audit and reporting duties of the auditors*

- 1) As an organ of the foundation, the auditors are obliged to check once a year whether the foundation's assets are managed and used in accordance with its purposes.

- 2) The auditors shall submit a report on the results of this review to the foundation supervisory authority.
- 3) If there is no reason for objection, a confirmation that the administration and use of the foundation's assets has been carried out in accordance with the foundation's purpose and in compliance with the provisions of the law and the foundation documents shall suffice.
- 4) If the auditors ascertain facts that indicate an improper use or management of the foundation's assets or that endanger the foundation's existence, they shall inform the foundation supervisory authority thereof in the form of a comprehensive report.
- 5) The foundation supervisory authority may demand information from the auditors on all facts of which they become aware in the course of the audit.
- 6) The foundation supervisory authority may issue guidelines on the content and form of the audits and the reports to be prepared.

Art. 9

*Inspection*

The foundation supervisory authority shall inspect the audit reports and foundation documents submitted to it as part of the supervisory procedure. This inspection does not exonerate the responsible foundation bodies.

Art. 10

*Submission and notification requirements*

Foundations that are exempt from the obligation to appoint an auditor shall submit the foundation deed, the supplementary foundation deed, regulations and other documents to the foundation supervisory authority at its request and shall notify it without delay of any changes to these foundation documents without being requested to do so.

Art. 11

*Request for necessary measures*

The foundation supervisory authority shall apply directly to the judge for the order of necessary measures pursuant to Art. 552 § 29 para. 3 PGR. These applications are not subject to a separate appeal.

Art. 12

*Confidentiality*

The foundation supervisory authority shall treat the contents of the foundation documents brought to its attention as well as other information brought to its attention in the course of its supervisory activities as confidential and shall use them exclusively for the performance of its duties.

V. Fees and costs Art.

13

*Fees*

1) The Foundation Supervisory Authority charges the following fees for the following activities:

- a) for the evaluation of audit reports: depending on the effort, 200 to 1 000 francs;
- b) for decisions on exemption from the obligation to appoint an auditor: 150 francs;
- c) for the inspection of the books and records of foundations in the case of exemption from the obligation to appoint an auditor: depending on the expense, 150 to 2,000 francs;
- d) for activities in connection with the application for required measures to the judge in legal welfare proceedings: depending on the expense.

2) The calculation of expenses according to paragraph 1 shall be based on an hourly rate of 150 Swiss francs.

Art. 14

*Costs*

The Foundation shall bear the costs of:

- a) the exercise of the power of audit pursuant to Art. 552 § 21 paras. 1 and 2 PGR by a supervisory body or a delegated third party; and
- b) the inspection of the books and records of the foundation by a commissioned third party pursuant to Art. 552 Sec. 29 para. 3 sentence 3 PGR.

VI. Final provision Art.

15

*Entry into force*

This Ordinance shall enter into force simultaneously with the Act of 26 June 2008 on the Amendment of the Law on Persons and Companies.

## **XVI. Token and VT Service Provider Act**

from 3 October 2019

### **I. General provisions Art. 1**

#### *Subject and purpose*

- 1) This law establishes the legal framework for transaction systems based on trusted technologies and regulates in particular:
- a) the civil law principles relating to tokens, the representation of rights by means of tokens, and their transfer;
  - b) supervision and the rights and obligations of VT service providers.
- 2) It aims to:
- a) ensuring trust in digital legal transactions, especially in the financial and business sectors, and protecting users on VT systems;
  - b) the creation of optimal, innovation-friendly and technology-neutral framework conditions for the provision of services on VT systems.

### **Art. 2**

#### *Definitions and designations*

- 1) For the purposes of this Act shall be deemed to include:
- a) "trusted technologies (VT)": Technologies that ensure the integrity of tokens, the unique assignment of tokens to VT identifiers, and the availability of tokens;
  - b) "VT Systems": Transaction systems that enable the secure transmission and storage of tokens and the provision of services based on them using trusted technologies;
  - c) "Token": a piece of information on a VT system that:
    - 1. may represent rights of claim or membership against a person, rights in property, or other absolute or relative rights; and
    - 2. is assigned to one or more VT identifiers;
  - d) "VT identifier" means an identifier that enables the unique assignment of tokens;
  - e) "VT Key": a key that enables the disposition of Tokens;

- f) "Users": persons holding Tokens and/or using VT Services;
  - g) "Token Issuance" means the public offering of Tokens;
  - h) "Basic Information": Information about tokens to be offered publicly that enables the user to make a judgment about the rights and risks associated with the tokens and about the VT service providers involved;
  - i) "VT service provider" means a person who performs one or more of the functions specified in subparagraphs (k) through (u);
  - k) "Token Issuer" means a person who publicly offers Tokens on its own behalf or on behalf of a principal;
  - l) "Token creator" means a person who generates one or more tokens;
  - m) "VT key custodian": a person who custodies VT keys for principals;
  - n) "VT Token Custodian" means a person who holds Tokens in another person's name for another person's account;
  - o) "VT Protector" means a person who holds Tokens on VT Systems in his own name for the account of another;
  - p) "physical validator" means a person who ensures the contractual enforcement of rights to things represented in Tokens within the meaning of property law on VT Systems;
  - q) "VT exchange service provider" means a person who exchanges legal tender for tokens and vice versa and tokens for tokens;
  - r) "VT verifier": a person who verifies the legal capacity and prerequisites for the disposal of a Token;
  - s) "VT Price Service Provider" means a person who provides aggregated price information to users of VT Systems based on buy and sell offers or completed transactions;
  - t) "VT identity service provider" means a person who identifies and registers the disposer of a token;
  - u) "VT Agent" means a person who professionally distributes or provides VT Services on behalf of and for the account of a foreign VT Service Provider in the domestic market.
- 2) Among the personal and functional designations used in this Act.

are persons of the female and male gender.

II. Civil law basis Art. 3

*Subject matter and scope*

- 1) This chapter governs the civil law qualification of tokens and their disposition on VT systems.
- 2) It applies when:
  - a) Tokens are generated or issued by a VT service provider domiciled or resident in the country; or
  - b) parties in a legal transaction concerning tokens expressly declare its provisions to be applicable.
- 3) Art. 4 to 6 and 9 shall apply mutatis mutandis also to tokens which do not represent rights.

Art. 4

*Token qualification*

If Liechtenstein law is applicable pursuant to Art. 3, the Token shall be deemed to be domestically located assets.

Art. 5

*Power of disposal and authority to dispose*

- 1) The holder of the VT key has the power of disposal over the token.
- 2) The person who has the power of disposition is presumed to be also the person authorized to dispose of the token. For each former holder of the power of disposition it is presumed that he was the person authorized to dispose of the token at the time of his holding.
- 3) If someone is the holder of the power of disposal without intending to be the holder of the power of disposal, he may rely on the fact that the person from whom he received the token in good faith is the holder of the power of disposal.

Art. 6

*Token disposals*

- 1) As an injunction applies:
  - a) the transfer of the right to dispose of the token; or

b) the creation of a security or usufructuary right over a token.

2) The disposal of a token requires that:

a) the transfer of the Token has been completed in accordance with the rules of the VT system, whereby a limited right in rem to a Token can also be ordered without a transfer, provided that this is recognizable to third parties and the time of the order is clearly established;

b) the transferor and the transferee agree to transfer the right to dispose of the Token or to create a limited right in rem in the Token; and

c) the transferor is entitled to dispose of the assets in accordance with Art. 5; Art. 9 remains reserved.

3) If a token is disposed of without legal grounds or if such grounds subsequently cease to exist, reversal shall be effected in accordance with the provisions of the law on enrichment (§§ 1431 et seq. ABGB).

#### Art. 7

##### *Effects of the order*

1) The disposition of the token causes the disposition of the right represented by the token.

2) If the legal effect under paragraph 1 does not occur by operation of law, the person obligated by the disposition of the token shall ensure by appropriate measures that:

a) the disposition of a token directly or indirectly effects the disposition of the represented right; and

b) a competing disposition of the represented right is excluded.

3) The disposition of a token is legally binding and effective against third parties even in the event of foreclosure proceedings against the transferor if the transfer:

a) was triggered in the VT system before the proceedings were opened; or

b) was triggered after the opening of the proceedings in the VT system and on the day of the opening of the proceedings, provided that the transferee proves that it had no knowledge of the opening of the proceedings or should have had such knowledge had it exercised due diligence.

#### Art. 8

*Legitimation and exemption effect*

- 1) The authorized disposer identified by the VT system is deemed to be the legal owner of the right represented in the token vis-à-vis the obligated party.
- 2) The obligor shall be released by payment to the rightful owner identified by the VT system, unless he knew or should have known with due diligence that the latter was not the lawful owner of this right.

Art. 9

*Acquisition by virtue of good faith*

Whoever receives tokens transferred in good faith and against payment for the purpose of acquiring the right of disposal or a limited right in rem shall be protected in his acquisition, even if the transferor was not entitled to dispose of the token, unless the transferee was aware of the lack of the right of disposal or should have been aware of it if he had exercised due diligence.

Art. 10

*Token invalidation*

- 1) If a VT Key is missing or if a Token is otherwise non-functional, the person who was authorized to dispose of the Token at the time of its loss or when it became non-functional may apply for the Token to be invalidated in a non-contentious procedure.
- 2) For this purpose, the applicant must provide the district court with credible evidence of his right of disposal and the loss of the VT key or the inability of the token to function.
- 3) The defendant is the person obligated by the right represented in the token.
- 4) The declaration of invalidation of a token shall be published without undue delay in the Official Gazette and, after the district court has taken its measures, in another suitable manner.
- 5) In the event of a declaration of invalidity, the applicant may assert his right without the token or request the generation of a new token at his expense.

III. Supervision of VT service providers

A. General

Art. 11



*Subject matter and scope*

- 1) This chapter regulates the registration and supervision of VT service providers domiciled or resident in the country, as well as their rights and obligations.
- 2) It does not apply to the state, municipalities and associations of municipalities, and public enterprises when they act in their capacity as public authorities.

B. VT service provider registration

1. registration obligation and requirements

Art. 12

*Registration obligation*

- 1) Persons with their registered office or place of residence in Austria who wish to provide VT services in Austria on a professional basis must apply in writing to the FMA for registration in the VT Service Providers Register (Art. 23) before providing the service for the first time.
- 2) Token issuers domiciled or resident in Switzerland that issue tokens in their own name or not professionally in the name of the principal must apply in writing to the FMA for entry in the VT Service Register before commencing their activities if tokens with a value of CHF 5 million or more are issued within a period of twelve months.
- 3) Persons domiciled or resident abroad who wish to provide VT services using physical vending machines in Austria must apply in writing to the FMA for entry in the VT service provider register before the vending machines are put into operation for the first time.

Art. 13

*Registration requirements*

- 1) Registration in the VT Register of Service Providers (Art. 23) requires that the applicant:
  - a) is capable of acting;
  - b) is reliable (Art. 14);
  - c) is professionally suitable (Art. 15);
  - d) has its registered office or place of residence in Germany;
  - e) if applicable, has the necessary minimum capital (Art. 16);

- f) has an appropriate organizational structure with defined areas of responsibility and a procedure for dealing with conflicts of interest;
  - g) has written internal procedures and control mechanisms that are appropriate with regard to the type, scope, complexity and risks of the VT services provided and that ensure adequate documentation of these;
  - h) has special internal control mechanisms (Art. 17), if applicable;
  - i) if he intends to act as VT protector, has a license under the Fiduciary Act; and
  - k) if it intends to engage in an activity that is subject to an additional licensing requirement under a law pursuant to Art. 5 para. 1 of the Financial Market Supervision Act, has the corresponding license.
- 1a) Paragraph 1(e) to (i) shall not apply to VT agents.
- 2) Subject to Articles 14 to 17, the Government may define the registration requirements under paragraph 1 in more detail by ordinance.

Art. 14

*Reliability*

- 1) A natural person is excluded from the provision of a VT service if:
- a) they have been convicted by a court of law of fraudulent concealment, damaging another's creditors, favoring a creditor or grossly negligent impairment of a creditor's interests (§§ 156 to 159 StGB)  
has been sentenced to a term of imprisonment exceeding three months or to a fine of more than 180 daily rates for any other offense and the conviction has not been discharged;
  - b) it has been penalized in the last ten years prior to the filing of the application for serious or repeated violations of the provisions under the Act against Unfair Competition, the Consumer Protection Act or an act pursuant to Art. 5 para. 1 of the Financial Market Supervision Act;
  - c) there has been an unsuccessful garnishment of the person in the five years preceding the application;
  - d) bankruptcy proceedings have been instituted against them or an application to institute insolvency proceedings has been dismissed for lack of assets to cover costs in the five years preceding the filing of the application; or

e) there are other reasons to seriously doubt their reliability.

2) Paragraph 1 letters a to d also apply to foreign decisions and proceedings, provided that the underlying offense is also punishable under Liechtenstein law.

3) In the case of legal entities, the requirements under paragraph 1 shall be met by the members of their governing bodies and the shareholders, partners or owners holding a qualifying participation of 10% or more in the legal entity.

4) Upon request, the FMA may grant leniency from an exclusion pursuant to paras. 1 and 2 if, based on the nature of the criminal act and the personal circumstances of the convicted person, there is no reason to fear that the same or similar criminal act will be committed in the course of the provision of a VT service.

#### Art. 15

##### *Professional suitability*

A person is considered to be professionally suitable if he or she is sufficiently qualified for the intended task on the basis of his or her training or previous career.

TVTG

#### Art. 16

##### *Minimum capital*

1) Applicants intending to act as VT service providers under Art. 2(1)(k), (m), (n), (p) and (q) must have adequate minimum capital or an equivalent guarantee when they commence their activities. The minimum capital shall be:

a) in the case of token issuers pursuant to Art. 12 para. 1:

1. 50,000 Swiss francs, insofar as tokens with a total value of up to and including 5 million Swiss francs are issued during a calendar year;
2. 100,000 Swiss francs, insofar as tokens with a total value of more than 5 million up to and including 25 million Swiss francs are issued during a calendar year;
3. 250,000 Swiss francs, insofar as tokens with a total value of more than 25 million Swiss francs are issued during a calendar year;

b) for VT key custodians: 100 000 francs;

c) for VT token custodians: 100,000 francs;

d) at VT exchange service providers:

1. 30,000 francs, provided that transactions with a total value of more than 150,000 francs up to and including 1 million francs are carried out during a calendar year;
  2. 100,000 francs, insofar as transactions with a total value of more than 1 million francs are carried out during a calendar year;
- e) for physical validators:
1. 125,000 francs, provided that the value of the items whose contractual enforcement is guaranteed by the physical validator does not exceed 10 million francs;
  2. 250,000 Swiss francs, provided that the value of the items whose contractual enforcement is guaranteed by the physical validator exceeds 10 million Swiss francs.
- 2) The minimum capital requirements pursuant to paragraph 1 may not be exceeded at any time.
- 3) Applicants intending to provide more than one VT service shall meet the highest minimum capital requirement under paragraph 1.

Art. 17

*Special internal control mechanisms*

- 1) Applicants intending to act as VT service providers under Art. 2(1)(k) to (t) must have appropriate internal control mechanisms in place to ensure the following when they commence their activities:
- a) In token issuers:
1. the disclosure of basic information (Art. 30 to 38) at any time during the token issue and for at least ten years thereafter;
  2. the prevention of abuse with regard to the possibility of accepting tokens to waive basic information (Art. 31 para. 1 let. a);
  3. the execution of the token issue in accordance with the terms of the basic information;
  4. maintaining the operated activities in case of interruptions during token issuance (business continuity management);
- b) For token generators, the use of appropriate measures to ensure that:
1. the right is correctly represented in the token during the lifetime of the token;

2. the disposition of a token directly causes the disposition of the represented right;
3. a competing disposition of the represented right is excluded both under the rules of the VT system and under the rules of the applicable law;
- c) For VT key custodians:
  1. the establishment of appropriate security measures to prevent, in particular, the loss or misuse of VT keys;
  2. the safekeeping of customers' VT keys separate from the business assets of the VT key custodian;
  3. maintaining activities in the event of interruptions (business continuity management);
- d) At VT token custodians:
  1. the establishment of appropriate security measures to prevent, in particular, the loss or misuse of VT keys;
  2. the safekeeping of customers' tokens separate from the VT Token Depository's operating assets;
  3. the unique assignment of tokens to customers;
  4. the execution of customer orders in accordance with the order;
  5. maintaining activities in the event of interruptions (business continuity management);
- e) in the case of physical validators, their liability in the event that the rights to property they have granted cannot be enforced in accordance with the contract;
- f) for VT protectors:
  1. the establishment of appropriate security measures to prevent, in particular, the loss or misuse of VT keys;
  2. the safekeeping of customers' tokens separate from the VT Protector's operating assets;
  3. the unique assignment of tokens to customers;
  4. the execution of customer orders in accordance with the order;
  5. maintaining activities in the event of interruptions (business continuity management);

g) at VT exchange service providers:

1. The disclosure of comparable market prices of traded tokens;
2. The disclosure of its own buying and selling prices of traded tokens;

h) for VT audit bodies, the use of appropriate measures to ensure that the audit services they provide are reliable;

i) at VT price service providers:

1. the traceability of the published prices;
2. the avoidance of conflicts of interest when setting prices;
3. the disclosure of information on transactions with related parties to the users concerned;

k) At VT identity service providers:

1. the use of appropriate measures to enable the identity of the person authorized to dispose of a token to be established, ensuring that:

aa) in the case of natural persons present in person or representatives of legal entities, the identity is established by means of an official photo ID or by means of another proof of reliability that is equivalent, documented or to be documented; for representatives of legal entities, it must also be ensured that the required power of representation is established;

bb) in the case of natural persons or representatives of legal entities who are not present in person, other methods of identification are used which enable identification equivalent to that specified in subparagraph (aa);

2. the correct assignment of VT identifiers to the rightful holder;
3. the secure storage of customer data.

2) The obligations resulting from the internal control mechanisms pursuant to paragraph 1 shall be complied with at all times.

2. Registration procedure Art. 18

*Registration request*

1) The application for registration under Article 12 shall contain the following information and documents:

- a) Name or company and address of the applicant;
- b) Details of the planned VT service;

- c) Details of the VT systems to be used as part of the proposed VT service;
  - d) for legal entities, information on the legal form of the applicant;
  - e) Evidence that the requirements of Articles 13 to 17 have been met;
  - f) upon request of the FMA, further information and documents to the extent required for the assessment of the application for registration.
- 2) The application for registration as well as the information and documents pursuant to par. 1 may be submitted to the FMA in electronic form. The FMA may require that documents be submitted in original or in certified or apostilled form.
- 3) Changes in the information and facts pursuant to par. 1 shall be reported to the FMA without delay. Such notification shall be made prior to any public announcement.
- 4) The FMA may waive the submission of certain information and documents pursuant to par. 1 if these are already available at the FMA, in particular because:
- a) the applicant already has a license under the financial market supervision legislation;
  - b) the applicant has already applied for the provision of a VT- other than the one applied for. service is registered; or
  - c) the applicant was previously registered for the same VT service.
- 5) The Government shall regulate the details of the application for registration, in particular the evidence required under subsection 1(e), by ordinance.

#### Art. 19

##### *Entry in the VT Service Provider Register*

- 1) On the basis of the complete application and the information and documents submitted, the FMA must examine whether the registration requirements are met.
- 2) The FMA must decide on the complete application within three months.
- 3) If all requirements for registration are met, the FMA shall enter the applicant in the VT Service Provider Register (Art. 23) and notify the applicant of the entry by sending an extract from the VT Service Provider Register. The FMA may register the applicant subject to conditions and requirements; the conditions and requirements shall be imposed.

4) If the requirements for registration are not met, the FMA shall determine this within the period under paragraph 2, without prejudice to a procedure under Art. 46, and shall prohibit the provision of the VT service applied for.

5) The VT service applied for may only be performed after it has been entered in the VT Service Provider Register.

### 3. Expiration and withdrawal

#### Art. 20

##### *Expiration of registration*

1) A registration under Art. 19 expires if:

- a) the business activity is not commenced within one year;
- b) the business activity has not been carried out for at least one year;
- c) waived in writing;
- d) bankruptcy proceedings have been instituted against the VT service provider with final effect or an application to institute insolvency proceedings has been rejected for lack of assets to cover costs; or
- e) the company name of the VT service provider is deleted from the Commercial Register.

2) In justified cases, the FMA may, upon application, extend the deadlines pursuant to par. 1 letters a and b.

3) The VT service provider shall be notified of the expiry of the registration by means of a written order stating the reasons for the expiry and, after the expiry has become legally effective, it shall be published in the Official Gazette at the expense of the VT service provider and recorded in the VT service provider register in accordance with Art. 23.

#### Art. 21

##### *Withdrawal of registration*

1) The FMA shall withdraw a registration pursuant to Art. 19 if:

- a) the registration requirements are no longer met;
- b) material circumstances were not known to the FMA at the time of registration;
- c) the VT Service Provider has obtained the registration by providing false information or by any other means;
- d) a VT service provider systematically or seriously violates its legal obligations; or
- e) a VT service provider complies with the FMA's requests to restore the



lawful condition in accordance with paragraph 2.

2) In cases pursuant to par. 1 letters a and b, the FMA shall request the VT service provider concerned to restore the lawful situation by setting a deadline of at least four weeks. If the request cannot be met by the

VT service provider cannot be served due to lack of delivery address or lack of organs, a one-time announcement of the request shall be made in the official gazette.

3) The VT service provider shall be notified of the withdrawal of registration by means of a written decision stating the reasons for the withdrawal and, once the decision has become legally effective, it shall be published in the Official Gazette at the expense of the VT service provider and noted in the VT service provider register in accordance with Art. 23.

#### Art. 22

##### *Effect of lapse and withdrawal of registration*

1) Upon the expiry or withdrawal of registration under Articles 20 and 21, the VT service provider shall immediately cease its activities.

2) The VT service provider shall take the necessary precautions to ensure that the interests of its clients are not adversely affected by the discontinuation of its activities and shall inform the FMA without delay of such precautions, submitting a corresponding description thereof.

3) If the FMA recognizes that the precautions are not sufficient, it must monitor the implementation and, if necessary, commission an audit office to monitor the implementation. The costs shall be borne by the VT service provider concerned.

4. VT Service Provider Register Art. 23

##### *Maintenance of the VT service provider register*

1) The FMA shall maintain a publicly accessible register in which entries shall be made:

- a) VT service providers registered in Liechtenstein, with the date of registration;
- b) the scope of registered VT services according to Art. 12, including all- due conditions, with the date of registration of the respective VT service;
- c) the expiry or withdrawal of registration in accordance with Articles 20 and 21.

2) The FMA shall make entries pursuant to par. 1 on the basis of a notification pursuant to

Art. 18

Para. 3 to be checked and, if necessary, updated without delay.

3) The FMA shall make the VT Service Provider Register available free of charge via its website. In addition, the FMA shall grant access to the VT Service Provider Register to anyone at its head office, subject to technical possibilities.

#### 5. Conduct of business Art. 24

##### *Designation protection*

1) Designations suggesting activity as a VT service provider may be used in the company name, in the designation of the business purpose and in business advertising only by registered VT service providers.

2) The Government may regulate the details of designation protection by ordinance.

#### Art. 25

##### *Backup requirements*

1) Tokens held in trust or in the name of the Customer are to be regarded as third-party assets in legal protection proceedings, execution and insolvency proceedings of the VT Service Provider and will be segregated in the Customer's favor, subject to all claims of the VT Service Provider against the Customer. In the interest of the Users, they must be protected against claims of other creditors of the VT Service Provider, in particular in the event of bankruptcy proceedings. The Tokens must be kept separate from the assets of the VT Service Provider at all times.

2) VT keys held or kept by a VT service provider for a customer in its own name or in the name of a third party are to be regarded as third-party assets in legal protection proceedings, compulsory enforcement and insolvency proceedings of the VT service provider and will be segregated in the VT service provider's favor, subject to all claims of the VT service provider against the customer. In the interest of the users, they must be

claims of other creditors of the VT service provider, especially in the event of bankruptcy proceedings, are protected.

3) A VT service provider shall, upon request, provide evidence to the FMA during ongoing business operations that it has taken sufficient measures to meet the requirements specified in par. 1. If the evidence is not provided or if the measures are not sufficient, the FMA shall request the VT service provider to provide the required evidence or to take precautions to

appropriate and necessary to remedy the existing deficiencies. The FMA shall specify a reasonable period of time for this purpose. If the evidence or precautions are not submitted or not carried out in due time, the FMA may take appropriate measures, in particular those pursuant to Art. 43 par. 5.

4) In the event of execution against his VT service provider, a User may file an objection (Article 20 of the Execution Code) if the execution relates to the Tokens secured under Paragraph 1 or the VT keys secured under Paragraph 2. Under the same conditions, the User has the right to segregation in the event of bankruptcy proceedings against the assets of its VT service provider (Art. 41 of the Insolvency Code).

#### Art. 26

##### *Retention of records and supporting documents*

- 1) VT service providers must retain all relevant records and supporting documents for regulatory purposes for at least ten years.
- 2) Special legal obligations remain reserved.

#### Art. 27

##### *Outsourcing of tasks*

- 1) Outsourcing of important operational tasks is permitted if:
  - a) the quality of the VT service provider's internal control is not materially impaired;
  - b) the VT service provider's obligations under this Act remain unchanged; and
  - c) the registration requirements under this Act are not eroded.
- 2) In this context, an operational task shall be deemed important in particular if its inadequate or omitted performance would materially impair the VT service provider's continuous compliance with its obligations under this Act or its financial performance.
- 3) A VT service provider that outsources operational tasks shall take reasonable precautions to ensure that the requirements of this Act are met.
- 4) Special statutory provisions on the outsourcing of tasks remain reserved.

#### Art. 28

*Reporting requirements*

- 1) VT service providers shall report to the FMA without delay:
  - a) any changes related to the registration requirements;
  - b) the cessation of business activities;
  - c) the deletion of the VT service provider from the Commercial Register;
  - d) the existence of any other ground for lapse under Art. 20.
- 2) VT service providers must report to the FMA all information about their business activities that is required for the exercise of supervision.
- 3) The Government shall regulate the details of the reporting obligations, in particular the frequency and the content of the reports pursuant to paragraph 2, by ordinance.

Art. 29

*Publication requirements*

VT service providers shall publish in a manner accessible to the public at all times:

- a) Details of the VT systems they use;
- b) A statement of the suitability of the VT systems used for the particular application purposes; and
- c) Information on any change of a VT system, including a corresponding justification.

6. Basic information in token issues

Art. 30

*Obligation to prepare and publish basic information and to display the token issue*

Token issuers shall, subject to Art. 31, prior to the issuance of tokens:

- a) basic information in accordance with the following provisions;
- b) Publish the basic information in an easily accessible manner; and
- c) to notify the FMA of the token issue.

Art. 31

*Exceptions*

- 1) The obligations under Art. 30 let. a and b do not apply to a public offering of tokens if:

- a) all transferees have demonstrably declared prior to the acquisition of the token that they waive the basic information;
  - b) the offer is aimed at fewer than 150 users;
  - c) the sales price of the total issue does not exceed 5 million Swiss francs or the equivalent value in other currencies; or
  - d) there is already an obligation to publish qualified information about the public offering of tokens under other laws.
- 2) In any subsequent public resale of tokens, no further basic information is required to be disclosed if:
- a) basic information within the meaning of Art. 30 has already been published; and
  - b) the issuer or the person responsible for the preparation of the key information has consented to its use in a written agreement.

#### Art. 32

##### *Form and language of basic information*

- 1) Basic information shall be prepared and published in a form that is easy to analyze and understand.
- 2) Basic information can be created and published in one or more documents.
- 3) If basic information consists of several documents, the token issuer shall prepare and publish a short, easily understandable summary containing information about the token issuer and the tokens to be issued.
- 4) Basic information must be prepared and published in German or English.

#### Art. 33

##### *Basic information content*

- 1) Basic information shall include, in particular, the following:
  - a) Information about the tokens to be issued and the rights associated with them;
  - b) the designation of the VT system used;
  - c) a description of the purpose and the nature of the legal transaction underlying the token issue;
  - d) a description of the conditions of acquisition and transfer of the tokens;
  - e) Information about the risks associated with the acquisition of the tokens;

- f) in the issuance of tokens representing rights to things:
1. Proof of ownership of the item from a registered physical validator; and
  2. a confirmation from a registered physical validator that the rights represented in the issued tokens are also enforceable according to the basic information.
- 2) The basic information shall also include a summary that briefly and in a generally understandable manner contains the essential information in the language in which the basic information was originally prepared. The summary must also contain warnings that:
- a) it is to be understood as an overview of the following basic information;
  - b) the acquirer must read all of the basic information prior to the acquisition; and
  - c) those persons who have assumed responsibility for the summary, including any translation thereof, or from whom its issue emanates, may be held liable, but only in the event that the summary is misleading, inaccurate or contradictory when read together with the other parts of the basic information.
- 3) The basic information must indicate the names and functions, and in the case of legal entities the company name and registered office, of those responsible for its content. The basic information must contain a declaration by these persons that, to the best of their knowledge, the information is correct and that no material information has been omitted.
- 4) The basic information must also indicate the names and functions, and in the case of legal entities the company name and registered office, of those responsible for the technical and legal functionality of the tokens.
- 5) The token issuer shall mark the basic information with the date of issue and take appropriate measures to ensure that it cannot be changed.
- 6) The Government may regulate the details of the content of the basic information by decree.

Art. 34

*Addendum to basic information*

- 1) Any significant new factor, material misstatement or inaccuracy relating to the information contained in the basic information that is discovered after the initial publication of the basic information must be disclosed in a supplement to the basic information.
- 2) In addition, the summary and any translations thereof shall be supplemented with the information contained in the addendum.
- 3) The Government may regulate the details of the supplement to basic information by ordinance.

Art. 35

*Liability*

- 1) If information in basic information to be prepared in accordance with this Act is incorrect or incomplete, or if the preparation of basic information in accordance with these provisions has been omitted, the persons responsible in accordance with Art. 33 paras. 3 and 4 shall be liable to each user for the damage which the user has suffered as a result, unless they prove that they exercised the care of a prudent businessman in preparing the basic information. Damage shall be deemed to be only the actual direct damage suffered and not also lost profit.
- 2) The persons referred to in para. 1 shall also be liable for their auxiliary persons as well as for the persons commissioned by them, unless they prove that they have exercised due care in the selection, instruction and supervision according to the circumstances.
- 3) The liability according to paragraph 1 and 2 can neither be excluded nor limited in advance to the detriment of users in case of intent or gross negligence.
- 4) Liability for information in the summary, including translations thereof, is only accepted if it is misleading, inaccurate or contradictory in relation to other parts of the basic information or if it does not convey all essential information. The summary must contain a clear warning in this respect.

Art. 36

*Solidarity*

If more than one person is liable to pay compensation for a loss, each of them shall be in-

The Company shall be jointly and severally liable with the others to the extent that the damage is personally attributable to it on the basis of its own fault and the circumstances.

Art. 37

*Jurisdiction*

The Regional Court shall have jurisdiction for actions brought by the transferee of tokens arising from the legal relationship with a token issuer domiciled in Germany.

Art. 38

*Limitation*

The claim for damages against the persons responsible according to the above provisions shall be time-barred after one year from the day on which the injured party has knowledge of the damage and of the person liable to pay compensation, but in any case after the expiry of ten years from the day of the damaging act.

C. Supervision Art. 39

*Responsibility*

The Financial Market Authority (FMA) is entrusted with the supervision of VT service providers and the implementation of the associated legal provisions.

Art. 40

*Official Secrets*

- 1) The FMA, any other persons called in by the FMA and all representatives of the authorities shall be subject to official secrecy for an unlimited period of time with regard to confidential information that becomes known to them in the course of their official activities.
- 2) Confidential information pursuant to paragraph 1 may be disclosed in accordance with this Act and special statutory provisions.
- 3) If bankruptcy proceedings have been initiated against a VT service provider by court order or liquidation has been initiated, confidential information that does not relate to third parties may be disclosed in civil proceedings if this is necessary for the proceedings in question.
- 4) Without prejudice to cases covered by criminal law, the FMA, all other administrative authorities, courts and bodies, as well as other natural persons and legal entities, may use confidential information received under this Act only for the performance of their responsibilities and duties under this Act or for the purposes for which the information was transmitted,



and/or for ver-

administrative or judicial proceedings that relate specifically to the performance of these tasks, to the extent necessary for this purpose. However, if the FMA, another administrative authority, a court, a body or a person transmitting the information gives its consent, the authority, court or body receiving the information may use it for other financial market supervisory purposes.

Art. 41

*Cooperation of domestic authorities and agencies*

The FMA shall cooperate with other competent domestic authorities and agencies to the extent necessary to fulfill its duties under this Act.

Art. 42

*Processing and transmission of personal data*

1) The FMA and other competent domestic authorities and agencies may process or cause to be processed personal data, including personal data relating to criminal convictions and criminal offenses, of persons subject to this Act to the extent necessary for the performance of their duties under this Act.

2) They may transmit personal data to each other and to the competent authorities of other EEA Member States to the extent necessary for the performance of their duties under this Act.

3) They may transfer personal data to the competent authorities of third countries if, in addition to the requirements under paragraph 2, the data protection requirements under Chapter V of Regulation (EU) 2016/679 are met.

Art. 43

*Tasks and powers of the FMA*

1) Within the scope of its supervision, the FMA shall monitor compliance with the provisions of this Act and the ordinances issued thereunder.

2) The FMA is responsible in particular for the following tasks:

- a) the registration of VT service providers as well as the withdrawal of registrations;
- b) the provision of information on the applicability of this or any other

law listed in Art. 5 Par. 1 FMAG for precisely defined facts in connection with trusted technologies;

- c) the maintenance of the VT service provider register in accordance with Art. 23;
- d) the punishment of violations under Art. 47 par. 2.

3) The FMA has all the powers necessary to perform its duties, and may in particular:

- a) require from VT service providers all information and documentation necessary for the enforcement of this Act;
- b) order or carry out extraordinary audits;
- c) Decisions and orders issued;
- d) publish final decisions and orders;
- e) Conduct on-site inspections of VT service providers;
- f) publicly correct published misinformation, naming the VT service providers involved, and issue warnings;
- g) temporarily prohibit the provision of a VT service.

4) If the FMA becomes aware of violations of this Act or of other irregularities, it shall take the measures necessary to restore the lawful situation and to remedy the irregularities.

5) The FMA may assign an expert to act as an observer of a VT service provider if the interests of users or creditors appear to be acutely endangered by maladministration. The statutory auditor may be entrusted with this task. The observer shall monitor the activities of the governing bodies, in particular the implementation of the measures ordered, and shall report to the FMA on a regular basis. The observer shall enjoy an unrestricted right to inspect the business activities and the books and files of the VT service provider. The costs of the observer shall be borne by the VT service provider insofar as they are in reasonable proportion to the work associated with the activity and the expenses herefor.

6) If there is reason to believe that a person is providing unauthorized VT services under this Act, the FMA may demand information and documents from the person concerned as if it were a subordinate person. In urgent cases, the FMA may order the immediate cessation of activities without prior warning or setting of a deadline.

- 7) The costs incurred as a result of their misconduct shall be borne by the parties concerned in accordance with Art. 26 of the Financial Market Supervision Act.
- 8) The Government may regulate the details of the tasks and powers of the FMA by ordinance.

Art. 44

*Supervisory duties and fees*

The supervisory levies and fees are based on the financial market supervision legislation.

D. Procedure and legal remedies Art. 45

*Procedure*

Unless otherwise provided by this Act, the provisions of the Act on the General Administration of the State shall apply to the procedure.

Art. 46

*Appeals*

- 1) Appeals against decisions and orders of the FMA may be lodged with the FMA Complaints Commission within 14 days of notification.
- 2) Appeals against decisions and rulings of the FMA Complaints Commission may be lodged with the Administrative Court within 14 days of notification.

E. Penal provisions Art. 47

*Misdemeanors and infractions*

- 1) The district court shall punish for misdemeanor with imprisonment for a term not exceeding one year or with a fine not exceeding 360 daily penalty units who:
  - a) provides VT services subject to registration contrary to Art. 12;
  - b) contrary to Art. 24, uses a designation which suggests that he/she is working as a VT service provider;
  - c) as a VT service provider, has obtained registration by providing false information or in any other unlawful manner; or
  - d) as VT service provider systematically violates its legal obligations in a serious manner.
- 2) If the act does not constitute a criminal offense falling within the jurisdiction of the courts, the FMA shall impose a fine for a violation of the following provisions

fined up to 100,000 francs, who as VT service provider:

- a) does not comply with the minimum capital requirements according to Art. 16;
- b) does not have the internal control mechanisms listed in Art. 17;
- c) violates the reporting obligations pursuant to Art. 18 Par. 3 and Art. 28;
- d) fails to comply with the requirements and conditions of the FMA associated with registration pursuant to Art. 19 par. 3;
- e) violates the security obligations under Art. 25;
- f) contrary to Art. 26, does not keep any or insufficient records or does not keep supporting documents;
- g) outsources important operational tasks without meeting the requirements of Art. 27;
- h) violates the publication obligations under Art. 29;
- i) violates its obligations in connection with the preparation and publication of basic information or the notification of the token issue pursuant to Art. 30 et seq;
- k) fails to comply with a decree or order issued to him/her by the FMA with reference to the threat of punishment under this Article.

3) The FMA shall impose fines on legal entities if the violations under par. 2 are committed in the course of business activities of the legal entity (incidental offenses) by persons who acted either alone or as members of the board of directors, executive board, management board or supervisory board of the legal entity or by virtue of another management position within the legal entity by virtue of which they:

- a) are authorized to represent the legal entity externally;
  - b) Exercise supervisory authority in a managerial position; or
  - c) otherwise exercise significant influence on the management of the legal entity.
- 4) The legal entity shall also be liable for violations under paragraph 2 committed by employees of the legal entity, even if not culpably, if the violation was made possible or substantially facilitated by the fact that the persons referred to in paragraph 3 failed to take the necessary and reasonable measures to prevent such causes.
- 5) The liability of the legal person for the offense and the criminal liability of the persons referred to in subsection 3 or of employees referred to in subsection 4 on account of

of the same act are not mutually exclusive. The FMA may refrain from punishing a natural person if a fine has already been imposed on the legal person for the same violation and there are no special circumstances that preclude refraining from punishment.

6) In the case of negligent commission, the upper penalty limits under paras. 1 and 2 shall be reduced to half.

Art. 48

*Responsibility*

If the offences are committed in the business operations of a legal entity, the penal provisions shall apply to the members of the management and other natural persons who have acted or should have acted on its behalf, but with joint and several liability of the legal entity for fines, penalties and costs.

Art. 49

*Announcement of sanctions; binding effect of guilty verdicts*

1) The FMA may announce the imposition of final penalties at the expense of the person concerned, provided that this fulfills the purpose of this Act and is proportionate.

2) A verdict of guilty under this Act shall not be binding on the civil judge with respect to the assessment of guilt and wrongfulness and the determination of damages.

TVTG

IV. Transitional and final provisions Art. 50

*Transitional provisions*

1) Persons who, at the time of the entry into force of this Act, provide a VT service subject to registration under Article 12 shall:

a) to carry on their business activities in accordance with Articles 25 to 38; in so doing, they may continue to use previous designations in accordance with Article 24 until the expiry of the period referred to in subparagraph (b), even without registration; and

b) within a period of twelve months after the entry into force of this Act, to apply in writing to the FMA for entry in the VT service provider register; otherwise, the authorization to provide VT services under this Act shall expire.

2) The provisions on the civil law basis for tokens under Chapter II may also be declared applicable by the parties to tokens generated before the entry into force of this Act in accordance with Article 3 paragraph 2 letter b.

3) The provisions on basic information for token issues under Articles 30 to 38 shall apply to tokens that are offered to the public for the first time after the entry into force of this Act.

Art. 51

*Entry into force*

Subject to the unused expiry of the referendum period, this Act shall enter into force on 1 January 2020, otherwise on the day following its promulgation.

## **XVII. Token and VT service provider regulation**

from 10 December 2019

Based on Article 13(2), Article 18(5) and Article 28(3) of the Act of 3 October 2019 on Tokens and VT Service Providers (Tokens and VT Service Providers Act; TVTG), LGBl. 2019 No. 301, the Government decrees:

### **I. General provisions Art. 1**

#### *Subject*

This Ordinance, in implementation of the Act, regulates the details of:

- a) the information and documents required for the registration application;
- b) the reporting and notification obligations to the FMA.

### **Art. 2**

#### *Designations*

The designations of persons and functions used in this Ordinance shall be understood to mean persons of the female and male genders.

### **II. Registration of VT service providers**

### **Art. 3**

#### *Application documents*

1) The application under Article 18 of the Act shall be accompanied by the following information and documents:

- a) a description of the business model, including in particular the type of VT service planned and information on the VT systems used;
- b) a proof of the minimum capital according to Art. 4 and a proof of the origin of the funds;
- c) a description of the written internal procedures and control mechanisms pursuant to Art. 13 para. 1 let. g of the Act;
- d) a description of the specific internal control mechanisms that the applicant has put in place to comply with the requirements under Art. 17 of the Act and the due diligence legislation;
- e) a description of the organizational structure of the applicant including

a presentation of the outsourcing arrangements pursuant to Art. 27 of the Act;

f) the names of the persons who directly or indirectly hold a qualified interest within the meaning of Art. 14(3) of the Act in the applicant, the amount of their interest and proof that they are reliable;

g) the names of the members of the applicant's bodies and proof that they are reliable;

h) the names of the members of management responsible for VT service and evidence that they are suitable to ensure sound and prudent management;

i) the names of the persons responsible for providing the VT service and proof that they are professionally qualified;

k) the name of the member of the management level responsible in accordance with Art. 22 Para. 1 of the Due Diligence Act as well as proof that this member is professionally suitable within the meaning of Art. 36 Para. 1 of the Due Diligence Ordinance;

l) the legal form of the applicant;

m) the registered office and address of the applicant's head office;

n) upon request of the FMA, further information and documents to the extent required for the assessment of the application for registration.

2) If the applicant is a natural person, paragraph 1 letters a to e, h to k, m and n shall apply *mutatis mutandis*.

3) Art. 18 para. 4 of the Act is reserved.

#### Art. 4

##### *Proof of minimum capital*

1) The proof of the required minimum capital according to Art. 16 of the Law shall be:

a) a current balance confirmation of a capital deposit or blocked account of a bank domiciled in the EEA or Switzerland that is no more than three months old; or

b) in the case of a contribution in kind in the form of tokens:

1. a current valuation of these tokens, not more than three months old, by an auditor recognized by the FMA or an auditing firm recognized by the FMA; and

2. A current confirmation, no more than three months old, from a registered VT-



key or token custodian that the applicant is actually authorized to dispose of these tokens.

2) The FMA may accept equivalent sureties or guarantees.

III. Reporting and notification  
obligations Art. 5

*Periodic messages*

1) VT service providers must confirm in writing to the FMA by March 31 of a calendar year that the registration requirements pursuant to Art. 13 of the Act have been permanently met during the previous year.

2) VT service providers must provide evidence to the FMA by March 31 of a calendar year that the required minimum capital was permanently available in the previous year. If the minimum capital is provided in the form of

tokens are held, the VT service providers must provide proof in each case by the March 31 and September 30 of a calendar year.

3) In justified individual cases, the FMA may deviate from the frequency of reporting pursuant to paras. 1 and 2.

4) The obligation to report under paragraph 2 does not apply to VT service providers

- a) already have a license pursuant to the Financial Market Supervision Act; and
- b) must have a higher minimum capital within the scope of this authorization. Art.

6

*Change of registration requirements*

1) VT service providers must report in particular in accordance with Art. 28 para. 1 let. a of the Act:

- a) the change of qualifying holdings;
- b) the change of the member of the Executive Board responsible for VT services and other changes in executive body functions;
- c) the conclusion of new outsourcing agreements.

2) Together with the notification pursuant to par. 1, the evidence pursuant to Art. 18 par. 1 letter e of the Act shall be submitted to the FMA.

3) Changes to the registration requirements must be approved by the FMA.

Art. 7

*Display of the token issue*

1) The notification of the token issue pursuant to Art. 30 let. c of the Act shall contain at least the following information:

- a) Token Issuer Details;
- b) Token details;
- c) Details of the VT system used;
- d) Issue Period;
- e) Issue currencies;
- f) Target markets.

2) If necessary, the FMA may request further information.

IV. Final provision Art.

8

*Entry into force*

This Regulation shall enter into force on 1 January 2020.

## **XVIII. Fiduciary Act**

from 8 November 2013

### **I. General provisions Art. 1**

#### *Subject and purpose*

- 1) This law regulates the licensing, practice and supervision of trustees and trust companies.
- 2) It aims in particular to protect clients, to ensure confidence in the Liechtenstein financial center, and to promote access to international markets and competitiveness.
- 3) It also serves to implement Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (EEA Law Compendium: Annex VII 1.01).

#### **Art. 2**

##### *Scope*

This law applies to natural and legal persons who, as trustees or trust companies, carry out the following activities on a business basis:

- a) Establishment of associations, companies and trusts for third parties, in its own name and for the account of third parties, as well as related intervention before courts and administrative authorities;
- b) Assumption of management mandates pursuant to Art. 180a of the Persons and Companies Act and assumption of trusteeships;
- c) Financial advice and business consulting;
- d) Tax consulting;
- e) Accounting and auditing reviews, insofar as these are not reserved for auditors and auditing companies.

#### **Art. 3**

##### *Definitions and designations*

- 1) For the purposes of this Act shall be deemed to include:
  - a) "Businesslike" means engaging in an activity that is self-employed, regular, and for compensation, or whose profit-seeking intent is evident from the frequency of the

activity or for other reasons is to be inferred;

b) "Authorization for comprehensive activity" means an authorization entitling the holder to engage in all activities as defined in Art. 2 on a business basis;

c) "Restricted Activity Permit" means a permit authorizing the businesslike performance of activities under Art. 2(a) and (b);

d) "Qualified interest" means holding, directly or through a control relationship, at least 25% of the capital or voting rights in a trust;

e) "Place of business" means the place in the country where a natural person actually carries out the activity authorized under this Act;

f) Proprietary Transactions: Transactions in which there is a proprietary interest of the Trustee or the Trust Company by virtue of a financial, personal or business relationship or employment, giving rise to a suspicion that the independence of the Trustee or the Trust Company may be compromised.

2) The designations of persons, professions and functions used in this Act shall be understood to mean members of the female and male sexes.

## II. Permits

### A. Licensing requirements and conditions

#### 1. Trustee

#### Art. 4

##### *Authorization requirement*

Fiduciaries require a license from the Financial Market Authority (FMA) before commencing their business activities.

#### Art. 5

##### *Approval requirements*

1) The permit for comprehensive activity is granted if the applicant:

a) is capable of acting;

b) is trustworthy in the sense of Art. 6;

c) provides proof of training in accordance with Art. 7;

d) the Liechtenstein national citizenship or the citizenship of a Ver-

The Company is not a member of the European Economic Area (EEA) or of Switzerland or is treated as such on the basis of an international treaty;

- e) proves a practical activity according to Art. 8;
  - f) has successfully passed the trustee examination in accordance with Art. 9;
  - g) proves liability insurance or other financial security in accordance with Art. 11;
  - h) has a place of business in accordance with Art. 12; and
  - i) proves the appointment of an auditor or auditing company according to Art. 61a.
- 2) The restricted activity permit is issued if the applicant:
- a) meets the requirements for entry in the List of Liechtenstein Lawyers (Lawyers' List) pursuant to Art. 3 (2) (a) to (e) of the Lawyers' Act;
  - b) meets the requirements of paragraph 1 letters a, b, d, e, g, h and i; and
  - c) has successfully passed the additional examination according to Art. 10.
- 3) The documents according to Annex VII of Directive 2005/36/EC are equivalent to the evidence according to paragraph 1.

#### Art. 6

##### *Trustworthiness*

- 1) The requirement of trustworthiness according to Art. 5 Para. 1 Letter b is not fulfilled if the applicant has been legally sentenced to a prison term exceeding three months or to a fine of more than 180 daily rates for a misdemeanor or felony in connection with his/her professional activity.
- 2) After weighing all the circumstances, the FMA may judge that the requirement of trustworthiness is not met if:
  - a) there has been an unsuccessful garnishment of the applicant in the five years preceding the application;
  - b) within the last five years prior to the filing of the application, an application for the opening of insolvency proceedings against the applicant has been dismissed with final effect for lack of assets to cover the costs;

- c) bankruptcy proceedings have been instituted against the applicant with final effect within the last five years prior to the filing of the application;
  - d) a legally binding supervisory decision has been issued against the applicant due to a repeated or serious violation of financial market supervisory decrees;
  - e) a final disciplinary decision has been issued against the applicant;
  - f) criminal proceedings have been instituted against the applicant in connection with his/her professional activities and a final indictment has been issued;
  - g) the applicant has a final conviction for a misdemeanor or felony;
  - h) the applicant has been a managing director of a legal entity subject to the supervision of the FMA for which bankruptcy proceedings have been instituted or for which an application to institute insolvency proceedings has been dismissed with final effect for lack of assets covering the costs of the applicant during the five years preceding the filing of the application.
- 3) Paragraphs 1 and 2 also apply to foreign decisions and proceedings. Foreign criminal decisions and proceedings may only be taken into account if the underlying act is also punishable under Liechtenstein law at the time of commission.

#### Art. 7

##### *Training certificate*

The following shall be regarded as proof of training within the meaning of Art. 5 Para. 1 c):

- a) proof of successful completion of studies in law or economics at a university or college;
- b) proof of successful completion of an apprenticeship:
  1. which has a minimum duration of four semesters;
  2. whose minimum number of points is 60 ECTS points;
  3. teaches the subject matter in subject areas that are the subject of the trustee examination pursuant to Art. 9, Para. 3; this subject matter must comprise at least two-thirds of the training; and
  4. in which knowledge of the course contents according to item 3 must be demonstrated by successfully passing a standardized examination.

## Art. 8

*Practical activity*

- 1) The practical activity required for the exercise of the profession of trustee shall consist in an activity covering this profession with a trustee or a trust company, an auditor or an auditing company, with a lawyer or with an administrative authority of the country. For persons who have passed the bar examination, practical activity shall be credited in accordance with the Lawyers Act.
- 2) The practical activity must be related to the activities specified in Art. 2, with the individual areas of activity being specified. This must be expressly confirmed in writing by the employer.
- 3) The practical activity must last three years on a full-time basis, at least one year of which must be spent with an employer in Germany licensed to act as a trustee. In the case of part-time employment, the duration shall be increased accordingly.

## Art. 9

*Trustee Exam*

- 1) An applicant shall be admitted by the FMA to the trustee examination if it fulfills the requirements under Art. 5 par. 1 letters a to e.
- 2) The Trustee Examination is to be taken before the Trustee Examination Board.
- 3) The fiduciary audit includes:
  - a) one written paper each in accounting and auditing, law of persons and companies, commercial register law, professional law, supervision by the FMA, due diligence law, trade law, tax law,  
Contract law, inheritance law, financial advice; and
  - b) an oral examination in these and other subjects important for the practice of the profession of trustee.
- 4) For applicants who meet the requirements of Art. 5(2)(a), the trustee examination shall include:
  - a) one written paper each in accounting and auditing, tax law, financial consulting; and
  - b) an oral examination in these and other subjects important for the practice of the profession of trustee.

- 5) If the trustee examination is not passed, it can be repeated at the earliest after the expiry of one year. If the second examination is also failed, a final retake can take place at the earliest three years after the first examination.
- 6) The government shall regulate the details by ordinance.

Art. 10

*Additional examination*

- 1) An applicant shall be admitted to the supplementary examination by the FMA if it meets the requirements under Art. 5 para. 1 letters a to e and par. 2 letter a.
- 2) The additional examination comprises an oral examination on the basic principles of the law of persons and companies, commercial register law, professional law, supervision by the FMA, due diligence law, trade law, accounting and auditing activities, tax law and financial consulting.
- 3) In all other respects, Art. 9 Para. 2 and 5 shall apply mutatis mutandis to the performance of the additional examination.
- 4) The government shall regulate the details by ordinance.

Art. 11

*Liability insurance and other financial securities*

- 1) The liability insurance according to Art. 5 para. 1 let. g must:
  - a) cover liability for damages arising from the breach of professional duties in connection with activities under Art. 2 letters a, c, d and e;
  - b) provide for a sum insured of at least CHF 1 million for each claim and CHF 2 million for all claims in a year;
  - c) provide for subsequent liability for at least three years, whereby in the case of a mere change of insurance, the assumption of the prior risk is sufficient;
  - d) provide for a deductible of no more than 10% of the sum insured per claim. In justified cases, the FMA may, upon application, permit deviations therefrom; and
  - e) contractually oblige the insurance undertaking to notify the FMA immediately of the suspension or cessation of insurance coverage.
- 2) Exempt from the obligation to take out liability insurance is anyone who:
  - a) as the insured person by another person who meets the requirements of Para. 1.



The liability insurance policy is covered by a liability insurance policy taken out by another person;

b) provides equivalent security in some other way. Para. 1 letter c shall apply *mutatis mutandis*. The FMA shall decide on a case-by-case basis whether equivalent security exists.

Art. 12

*Registered office*

The place of business pursuant to Art. 5 Para. 1 Letter h must meet the spatial, personnel and organizational requirements for the exercise of the fiduciary profession.

2. Trust companies Art. 13

*Authorization requirement*

Trust companies require the approval of the FMA before commencing their business activities.

Art. 14

*Approval requirements*

1) The permit for comprehensive activity is granted upon application if:

a) the company is actually managed by a person who fulfills the requirements of Art. 5 Para. 1 Letters a) to f);

b) the company has the legal form of a joint-stock company, a limited liability company, a general partnership, a limited partnership, an establishment or a trust enterprise with personality;

c) the registered office and head office of the Company are located in Germany;

d) shareholders, partners or holders holding a qualifying interest in the Company meet the standards required in the interest of sound and prudent management of a trust company;

e) the members of the Board of Directors and other members of the Executive Board are trustworthy (Art. 6);

f) the company itself is trustworthy by analogous application of Art. 6 para. 2 letters a to d, f and g as well as para. 3;

g) proof of liability insurance or other financial security is provided in accordance with Art. 11; and

h) the appointment of an auditor or auditing company pursuant to Art. 61a is proven.

2) The restricted activity permit is issued upon application if:

a) in the management of the company is actually active a person who:

1. meets the requirements for entry in the list of attorneys pursuant to Art. 3(2)(a) to (e) of the Lawyers Act;

2. meets the requirements of Art. 5 Para. 1 Letters a, b, d and e; and

3. has successfully passed the additional examination according to Art. 10; and

b) the requirements according to paragraph 1 letters b to h are fulfilled.

B. Approval procedure

Art. 15

*Grant application*

1) The application for a license as a trustee or trust company must be submitted to the FMA.

2) The application shall be accompanied by the documents required to prove the prerequisites pursuant to Articles 5 and 14, including an original curriculum vitae; the FMA may accept copies instead of original documents and, in the case of documents in foreign languages, may require a certified translation. The documents evidencing trustworthiness must not be older than three months at the time of their submission.

3) The FMA shall send the applicant an acknowledgement of receipt within three working days of receipt of the complete application.

4) A decision on the application for a license shall be taken within six weeks of receipt of the complete application. In extraordinary cases, the FMA may reasonably extend this period.

5) The government shall regulate the details by ordinance.

Art. 16

*Granting and scope of the permit*

1) The permit is issued if the legal requirements are met. It may be granted subject to conditions or requirements.

2) The permit is issued either as a permit for comprehensive activity or as a permit for limited activity.

3) The authorization is highly personal and not transferable to third parties.

Art. 17

*Certificate for registration in the Commercial Register*

For trust companies, the FMA issues a certificate to the Office of Justice stating that the legal requirements have been met and that the trust company will be granted a license after entry in the Commercial Register. Without this certificate, the company may not be entered in the Commercial Register.

Art. 18

*List of trustees and trust companies*

1) The FMA shall include the licensed trustees and trust companies in a publicly accessible list that can be viewed on the FMA's website by means of a retrieval procedure.

2) The list shall contain:

a) in the case of trustees: the surname and first name, the title and the place of business;

b) in the case of trust companies: the company name, legal form, registered office and the surname and first name of the person actually in charge.

3) The list is to be updated by the FMA on a regular basis.

III. Rights and duties

A. General

Art. 19

*Professional, business and company name*

1) Fiduciaries must use the professional title "Fiduciary" or another professional or business title approved by the FMA. In addition, trustees with a license to engage in restricted activities must refer to this fact in an appropriate manner in their business dealings.

2) Trust companies shall choose a name that is neither misleading nor in violation of financial market supervisory decrees; they shall refer to their trust activities in business dealings in an appropriate manner. The company name and any changes thereto shall be subject to the approval of the FMA.

Art. 20

*Obligation to comply with the rules of professional conduct*

1) Trustees and trust companies must carry out their activities in accordance with the Code of Professional Conduct in a diligent, honest and professional manner in the best interests of their clients and must uphold the reputation of the profession through their conduct.

2) The Code of Professional Conduct shall contain provisions on:

- a) the prestige of the profession;
- b) the sincerity;
- c) the advertising;
- d) the fees;
- e) training and continuing education;
- f) data security;
- g) the processes for mandate transfer.
- h) Retrieved

Art. 21

*Secrecy*

1) Fiduciaries and fiduciary companies are obliged to maintain secrecy with regard to matters entrusted to them and facts that otherwise become known to them in their professional capacity, the confidentiality of which is in the interest of their clients. The statutory provisions on the duty to testify or provide information to the criminal courts, the FIU staff unit and the supervisory bodies remain reserved.

2) The right of the trustees and trust companies to maintain secrecy may not be circumvented by judicial or other official measures, in particular by questioning auxiliary employees of the trustee or the trust company or by ordering the surrender of documents, image, sound or data carriers (documents) or by seizing them; special regulations for the delimitation of this prohibition remain unaffected.

Art. 21a

*Avoidance of conflicts of interest*

1) Trustees and trust companies are obliged to avoid conflicts of interest:

- a) strictly separate its assets from customer funds;
- b) not to engage in proprietary trading (prohibition of proprietary trading);

- c) Disclose and document conflicts of interest to customers.
- 2) The government may regulate the details by ordinance.

Art. 21b

*Outsourcing*

1) Trustees and fiduciary companies may transfer activities in whole or in part to service providers with a written agreement. The following may not be outsourced:

- a) Activities according to Art. 2 letters a and b;
- b) Functions and activities of the Board of Directors, the Supervisory Board or the Executive Board.

2) In the event of outsourcing under subsection 1, the trustee and the trust company shall remain fully responsible for the performance of their duties under this Act.

3) Trustees and fiduciary companies ensure the smooth functioning of the outsourced activities.

4) The outsourcing of activities must not be carried out in such a way that any of the following may occur:

- a) Impairment of the quality of governance;
- b) excessive increase in operational risk;
- c) Impairment of the FMA's ability to monitor compliance with the duties of the trustor and the trust company; or
- d) Impairment of the auditor's or audit firm's activities.

5) The provisions of the Due Diligence Act remain reserved.

Art. 21c

*Financial solidity*

Trustees and trust companies must have sufficient financial resources to meet their obligations on time at all times.

Art. 22

*Reporting, approval and information requirements*

1) Trustees and trust companies must notify the FMA of any changes to the conditions for approval, in particular changes that are relevant for the assessment of the

trustworthiness according to Art. 6 without undue delay in writing.

2) Require prior approval by the FMA:

- a) the change of the person actually in charge, a member of the administration or another member of the management of a trust company;
- b) the change of a qualified participation of a trust company;
- c) the change of the name of a trust company;
- d) the change of liability insurance or other financial security.

3) Upon request, the FMA shall be provided with all information and documents as well as with all information it requires to fulfill its duties.

#### B. Governance

##### Art. 22a

###### *Principle*

1) Trustees and fiduciary companies must establish rules for governance and risk management. These rules must ensure the effective and prudent management of the business and also provide for the segregation of duties in the organization and the prevention of conflicts of interest. It must be specified who monitors their application and is responsible for them.

2) Fiduciaries and trust companies must assign the management and control of the company (governance) and the risk management to different persons. If the separation of functions is inappropriate due to the nature, size and complexity of the activities, the FMA may grant an exemption from the separation of functions upon application.

3) The auditor or auditing company shall verify the existence of the regulations pursuant to Paragraph 1 for corporate governance and risk management.

##### Art. 22b

###### *Internal control*

1) Trustees and trust companies shall have an effective internal control system. This system must at least include administrative and

accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the organization, and a function to monitor compliance with legal and corporate requirements.

2) The internal control system must include an effective system to ensure the communication of information. It must be designed in accordance with the size, nature, scope and complexity of the activities of the trustee or trust company; it is subject to regular review.

Art. 22c

*Risk Management*

1) Trustees and fiduciary companies must have an effective risk management system tailored to their size and internal organization.

2) Risk management shall include the strategies, processes and reporting procedures necessary to continuously identify, measure, monitor, manage and report on the risks incurred or potential to be incurred.

C. Accounting and reporting Art. 22d

*Accounting*

1) Trustees and trust companies that are not companies within the meaning of Art. 1063 of the PGR shall comply with the accounting provisions of the 1st, 2nd (with the exception of the 3rd subsection) and 4th sections of Title 20 of the PGR that apply to them.

2) For all trustees and trust companies, irrespective of their legal form, the provisions on the condensed balance sheet and income statement pursuant to Art. 1068 para. 4 PGR do not apply.

Art. 22e

*Commitment to external auditing*

1) Trustees and trust companies must have their business activities audited each year by an auditor independent of them or by an auditing company independent of them in accordance with Art. 61a.

2) They must allow the auditor or auditing company to inspect the company's documents and its books at any time and to provide all information required to fulfill the auditing obligation.

are.

3) You bear the costs of the external audit.

IV. Termination of the  
authorization Art.

23

*Revocation*

1) The license shall be revoked by the FMA if:

a) the holder of the authorization has obtained it by false statements or in any other unlawful manner; or

b) material circumstances were not known when the permit was issued.

2) Before revoking a license, the FMA shall hear the Board of Trustees.

3) Revocation of a permit shall be published in the Official Gazette at the expense of the permit holder.

Art. 24

*Expiration*

1) The permit expires if:

a) the licensee dies or becomes incapable of acting or is deleted from the commercial register;

b) the business activity is not commenced within one year of the granting of the license;

c) the business activity is no longer carried out for at least one year;

d) the authorization is waived in writing;

e) has been permanently banned from practicing the profession in disciplinary proceedings;

f) the initiation of the liquidation of the licensee is decided; or

g) bankruptcy proceedings have been validly instituted against the assets of the holder of the authorization or an application for the institution of insolvency proceedings has been rejected for lack of assets sufficient to cover the costs.

2) In justified cases, the FMA may, upon application, reasonably extend the deadlines pursuant to par. 1 letters b and c.

3) The expiration of a permit shall be recorded at the expense of the permit holder in the



Official Gazette

published.

Art. 25

*Withdrawal*

- 1) The license may be withdrawn by the FMA if:
  - a) the requirements for granting the permit are no longer met or the conditions or requirements associated with the permit are not complied with;
  - b) legal obligations or official orders are violated in a serious manner, in particular the request of the FMA to restore the lawful situation is not complied with.
- 2) The FMA must hear the Chamber of Trustees before withdrawing a license.
- 3) The withdrawal of a permit shall be published in the Official Gazette at the expense of the permit holder.

Art. 26

*Forced dissolution*

- 1) A company that carries on an activity under Article 2 without a license shall be dissolved by the Office of Justice at the request of the FMA if the purpose of this Act so requires.
- 2) The FMA shall take the measures necessary for the execution of the liquidation and the settlement of current business and shall issue the necessary instructions to the liquidator.
- 3) The FMA is responsible for selecting the liquidator to be appointed. The appointment and dismissal of the liquidator shall be made by the Office of Justice.
- 4) The provisions on liquidation pursuant to Art. 130 et seq. of the Persons and Companies Act (Personen- und Gesellschaftsrecht, PGR), in particular on the bearing of costs pursuant to Art. 133 para. 6 PGR, shall apply mutatis mutandis.
- 5) The FMA shall consult the Board of Trustees prior to the compulsory liquidation.
- 6) The dissolution of an unauthorized company shall be published in the Official Gazette at the expense of the persons responsible or at the expense of the estate.

*Handling of mandates*

Art. 27

*a) Principle*

- 1) If, in the event of termination of a license, an orderly settlement of mandates is not guaranteed, the Professional Ethics Committee shall ensure the settlement of mandates of the licensee.
- 2) The Professional Ethics Committee shall draw up a liquidation plan. This must contain in particular information about:
  - a) the persons responsible for this task; and
  - b) the criteria for the acceptance of mandates by trustees and trust companies.
- 3) The Professional Ethics Committee shall provide customer service.

Art. 27a

*b) Cooperation*

- 1) In order to fulfill its duties pursuant to Art. 27 Para. 1, the Professional Ethics Committee has comprehensive rights of information vis-à-vis the courts, the liquidator and the FMA; it is bound to secrecy.
- 2) The FMA shall inform the Professional Ethics Committee immediately of the termination of a license.
- 3) The Professional Ethics Committee shall inform the FMA without delay of:
  - a) the existence of a run-off case;
  - b) the wind-up plan;
  - c) ensuring customer service.

Art. 27b

*c) Costs*

- 1) The costs of winding up mandates shall be borne by the previous authorization holder (polluter pays principle).
- 2) In the event of a transfer of mandate, the associated costs shall be borne by the trustees and trust companies taking over the mandate.

V. Relationship with the European Economic Area and Third Countries

A. Domestic activity of foreign trustees

1. Branch

Art. 28

*Principle*

- 1) Persons who are citizens of another State party to the EEA Agreement or who are treated as such on the basis of an agreement between the States party to the EEA Agreement and who are authorized to carry on the activities referred to in Article 2 in accordance with the regulations of their State of origin may establish themselves in Switzerland in order to carry on these activities.
- 2) In addition to the rules of professional conduct applicable in their home state, the persons referred to in paragraph 1 shall be subject to the same rules of professional conduct and ethics as domestic fiduciaries with respect to all activities they perform in Switzerland.

## Art. 29

*Approval requirements*

- 1) Establishment within the meaning of Art. 28 requires a license from the FMA.
- 2) The applicant shall provide the following evidence of:
  - a) the power under Art. 28 par. 1;
  - b) the fulfillment of the requirements according to Art. 5 Para. 1 Letters a and b;
  - c) a professional qualification comparable to the professional qualification of a Liechtenstein trustee;
  - d) two years of full-time and independent practice of the profession of trustee in the home country within the last ten years, provided that the profession of trustee or the relevant training is not regulated in this country;
  - e) the successful passing of the qualifying examination according to Art. 30;
  - f) the existence of liability insurance or other financial security within the meaning of Art. 11;
  - g) the place of business in accordance with Art. 12.
- 3) The recognition of training certificates is carried out in accordance with the provisions of the Act on the Recognition of Professional Qualifications.

## Art. 30

*Suitability test*

- 1) The aptitude test is a state examination exclusively concerning the professional knowledge of the applicant, which is intended to assess his ability to practice the profession of trustee in Switzerland.

- 2) The aptitude test must take into account the fact that the applicant has a professional qualification to practice the fiduciary profession in the country of origin.
- 3) The FMA decides on the admission to the proficiency test. Admission to the qualifying examination shall be refused if the applicant does not meet the legal requirements or does not submit or provide the necessary documents and declarations.
- 4) Examination subjects are the compulsory subjects of personal and corporate law, tax law, professional law of trustees, supervision by the FMA, due diligence law and two elective subjects. The applicant has to choose one elective subject from each of the following elective subject groups, whereby one of the two chosen elective subjects has to be determined for the written examination and one for the oral examination:
  - a) Contract law or inheritance law;
  - b) Accounting and auditing activities or financial consulting.
- 5) In all other respects, Art. 9 Para. 2 and 5 shall apply *mutatis mutandis* to the performance of the proficiency test.
- 6) The government shall regulate the details by ordinance.

## 2. Free movement of services

### Art. 31

#### *Principle*

- 1) Persons who are citizens of another State party to the EEA Agreement or who are treated as such on the basis of an agreement between the States party to the EEA Agreement and who are authorized to carry on the activities referred to in Article 2 in accordance with the regulations of their State of origin may temporarily carry on these activities in Switzerland.
- 2) In addition to the rules of professional conduct applicable in their home state, the persons referred to in paragraph 1 shall be subject to the same rules of professional conduct and ethics as domestic fiduciaries with respect to all activities they perform in Switzerland.

### Art. 32

#### *Requirements*

- 1) Before commencing an activity in Austria, the persons referred to in Art. 31 par. 1 shall notify the FMA in writing. The FMA shall confirm receipt of the notification in writing.
- 2) The notification must be accompanied by:

- a) a certificate stating that the service provider is lawfully engaged in the activity in question in the country of origin and that he is not prohibited, even temporarily, from engaging in that activity at the time the certificate is presented;
- b) a professional qualification certificate;
- c) a proof of citizenship;
- d) proof of two years of full-time and independent practice of the profession of trustee in the home country within the last ten years, if the profession of trustee or the relevant training is not regulated in that country; and
- e) proof of the existence of liability insurance or other financial security as defined in Art. 11.
- 3) This declaration must be renewed once a year if the service provider intends to temporarily or occasionally leave the country during the year in question. It must be renewed immediately if there is a significant change from the previously certified situation.
- 4) The FMA shall be responsible for prohibiting the provision of services and, if necessary, for informing the courts or administrative authorities if the prerequisites pursuant to paragraph 2 are not or are no longer met.

#### Art. 33

##### *Job title*

A person who acts in accordance with Art. 31 must use the professional title which he is entitled to use in the home country in accordance with the law in force there, in the language or one of the languages of the home country.

#### B. Foreign activities of domestic trustees and trust companies Art. 34

##### *Obligation to report*

If trustees or trust companies domiciled in Austria intend to establish a subsidiary or branch abroad, they shall notify the FMA accordingly. Upon request, the FMA must be provided with the information required for supervision.

## VI. Disciplinary law

### A. General

Art. 35

*Disciplinary offense*

Any person who, as a trustee, as an actual manager of a trust company or as a member of the management or the supervisory or administrative board of a trust company, culpably violates the Code of Professional Conduct commits a disciplinary offense.

Art. 36

*Limitation*

1) A statute of limitations shall bar prosecution of a person subject to disciplinary proceedings for a disciplinary offense if:

- a) no disciplinary proceedings have been initiated within one year of the investigator becoming aware of the facts underlying a disciplinary offense; or
- b) no disciplinary decision has been issued by the Professional Ethics Committee within five years of the termination of the facts underlying a disciplinary offense.

2) If, prior to the expiry of the time limit pursuant to para. 1, criminal or supervisory proceedings are pending in respect of the same facts, or if preliminary criminal investigations are being conducted in this connection, the time limit shall be suspended for the duration of such proceedings.

3) If a disciplinary offense also constitutes a judicially punishable act and if the period of limitation under criminal law is longer than the period specified in subsection 1(b), the period of limitation under criminal law shall take its place.

4) If the person concerned commits a similar disciplinary offense again within the limitation period, the limitation period under subsection 1 shall not apply until the limitation period for this disciplinary offense has also expired.

Art. 37

*Disciplinary sanctions*

1) Disciplinary sanctions are:

- a) the written reprimand;
- b) Fines up to the amount of 50 000 francs;
- c) prohibition of business activity for a period of one year;
- d) the permanent disqualification from practicing the profession.

2) The disciplinary sanctions referred to in subsection 1(c) and (d) may be conditionally suspended, in whole or in part, subject to a probationary period of not less than one year and not more than three years, if it is reasonable to assume that they will be imposed,

that their threat will be sufficient to deter the person concerned from committing further disciplinary offenses.

3) In addition to the disciplinary penalty under par. 1 letters c and d, a fine may also be imposed.

4) When imposing a disciplinary sanction, particular consideration shall be given to the seriousness of the offence and to the income and financial circumstances of the person concerned.

#### Art. 38

##### *Interim measures*

1) The Professional Ethics Committee may order interim measures against a person subject to disciplinary proceedings if:

a) criminal proceedings have been instituted against them in connection with their professional activities or they have been convicted of a felony or misdemeanor by a final court decision; and

b) the provisional measure is necessary in view of the nature and gravity of the disciplinary offense charged because of serious disadvantages to be feared, in particular for the clients of the person concerned or the reputation of the profession.

2) Before a decision is taken on an interim measure, the person concerned must be given the opportunity to comment.

3) Interim measures are:

a) the supervision of business activities by the Professional Ethics Committee;

b) the temporary ban on the employment of salaried employees;

c) the provisional prohibition of the conduct of business.

4) Interim measures shall be revoked, amended or replaced by another if it becomes apparent that the conditions for the order do not or no longer exist or that the circumstances have changed significantly.

5) Interim measures shall cease to have effect upon the final termination of the disciplinary proceedings.

6) The Professional Ethics Committee is obliged to provide for the implementation of the interim

measures and to check that they are complied with. Art. 27b shall apply mutatis mutandis to the bearing of the corresponding costs.

7) The Professional Ethics Committee shall, if necessary, request the cooperation of the FMA.

Art. 39

*Rights of the data subject*

- 1) The person affected by disciplinary proceedings shall be entitled to full party rights, in particular the right to inspect files and the right to ask questions.
- 2) It may consult a lawyer to protect its rights.
- 3) Subject to Art. 49, it shall not be entitled to reimbursement of party costs.

Art. 40

*exclusion and rejection of members of the Professional Ethics Committee and the investigator*

1) The members of the Professional Ethics Committee and the investigator are excluded from participation in disciplinary proceedings if they:

- a) have a personal interest in the matter;
- b) are or have been married to the person concerned by the disciplinary proceedings or to the applicant, are or have been living in a registered partnership, are or have been living in a de facto cohabitation or are related or related by marriage up to the 4th degree. Election

The relationship of the child, stepchildren and legal guardians shall be treated in the same way as the natural relationship of the child; or

- c) are representatives, agents or employees of the data subject or of the applicant.
- 2) The members of the professional ethics committee and the investigator may themselves request exclusion or be refused by the person concerned or the prosecutor if:

- a) there is a close friendship, a personal enmity or a special relationship of duty or dependence with the person concerned or the person making the report; or
- b) they may be biased in the matter for other reasons.

3) The decision on the existence of reasons for exclusion or rejection shall be taken:

- a) with the Chairman of the Professional Ethics Committee: the President of the Supreme Court;



b) in the case of another member of the commission or the investigator: the chairman of the professional ethics committee.

4) No appeal shall be allowed against decisions under paragraph 3.

Art. 41

*Interruption of the procedure*

If criminal proceedings or proceedings by the supervisory authorities are being conducted on the basis of the facts underlying the alleged disciplinary offence, the Ethics Committee may suspend the disciplinary proceedings until they have become final. The ordering of interim measures remains unaffected by this.

Art. 42

*Discontinuation of the procedure*

The Professional Ethics Committee may discontinue the disciplinary proceedings in any procedural state if:

- a) there are no grounds for further prosecution;
- b) the fault of the person concerned is minor and his or her conduct has entailed no or only insignificant consequences; or
- c) a sanction has already been imposed by a court or a supervisory authority for the facts underlying the disciplinary offense charged.

Art. 42a

*Notification of the FMA*

- 1) The Professional Ethics Committee shall notify the FMA without delay:
  - a) the initiation of disciplinary proceedings;
  - b) the ordering, suspension or revocation of provisional measures;
  - c) the suspension or termination of disciplinary proceedings.
- 2) The investigator may inform the FMA about the conduct of investigations pursuant to Art. 43.

Art. 42b

*Right of inspection of the FMA*

If, because of the facts underlying a disciplinary proceeding, a dis-

If disciplinary proceedings have been initiated, the FMA shall have the right to inspect the relevant files of the proceedings of the Professional Ethics Committee.

Art. 42c

*Reporting*

- 1) The Professional Ethics Committee shall prepare an annual report on its activities, including a detailed list of all disciplinary investigations and disciplinary proceedings.
- 2) The report pursuant to subsection 1 shall be prepared as of December 31 of each year and submitted to the Government by April 30 of the following year at the latest.

B. Disciplinary proceedings Art. 43

*Carrying out examinations*

- 1) The investigator shall conduct investigations on suspicion of a disciplinary offense on his/her own initiative or upon notification.
- 2) It may discontinue an investigation into a disciplinary offense without further proceedings after examination with a brief record of the considerations determining it for a reason pursuant to Art. 42 let. a or b.
- 3) If the investigator discontinues the investigation, he/she shall notify the person concerned, if he/she has already been questioned.
- 4) No legal remedy shall be admissible against the decision to terminate the investigation.

Art. 44

*Initiation of the disciplinary procedure*

- 1) The investigator shall report to the Professional Ethics Committee on the findings of his/her investigation and request the initiation of disciplinary proceedings.
- 2) The Professional Ethics Committee shall decide without delay and without oral proceedings whether disciplinary proceedings are to be instituted or discontinued for a reason under Art. 42. The decision to initiate disciplinary proceedings shall also include the appointment of an instructor. No appeal shall be admissible against decisions to initiate or discontinue disciplinary proceedings.
- 3) The instructor shall conduct further examinations as part of the disciplinary process.

Art. 45

*Referral for oral proceedings or discontinuation of the disciplinary proceedings*

- 1) Upon completion of the investigation, the instructor shall submit to the Ethics Committee a report on the outcome of the investigation and a request for referral for oral proceedings or for discontinuance of the disciplinary proceedings.
- 2) The Professional Ethics Committee shall decide without oral proceedings whether the case is to be referred for oral proceedings or whether the disciplinary proceedings are to be discontinued for a reason under Art. 42. The decision to discontinue the proceedings shall be served on the investigator and the person concerned.
- 3) The referral decision shall specify the allegations and the orders to be made in preparation for the hearing.
- 4) There is no right of appeal against referral and recruitment decisions.

Art. 46

*Oral hearing*

- 1) The time and place of the hearing shall be determined by the chairman of the Ethics Committee. The person concerned and, if applicable, his legal representative shall be present at the oral hearing.

with reference to the referral decision and announcement of the members of the Professional Ethics Committee at least two weeks in advance.

- 2) The hearing is not open to the public.
- 3) Deliberations and votes are secret.

Art. 47

*Disciplinary decision*

- 1) The disciplinary decision of the Professional Ethics Committee shall acquit the person concerned or declare him guilty. If a disciplinary penalty is imposed, the decision shall at the same time pronounce on the penalty.
- 2) In the event of a guilty verdict, the imposition of a penalty may also be waived if it can be assumed, based on the circumstances of the case and the personality of the person concerned, that a guilty verdict alone will suffice to deter him or her from committing further disciplinary offenses.
- 3) The disciplinary decision, together with the reasons for the decision, shall be made in accordance with

The court shall announce the end of the oral proceedings and notify the person concerned and the investigator within four weeks.

4) The Professional Ethics Committee shall notify the FMA and the Fiduciary Chamber of its decision in writing. The Professional Ethics Committee is obliged to maintain secrecy.

Art. 48

*Execution of the decision*

1) Legally binding decisions of the Professional Ethics Committee are execution titles within the meaning of the Execution Code.

2) If an actual manager of a trust company is penalized, the trust company concerned shall be jointly and severally liable for fines and procedural costs.

Art. 49

*Cost bearing by third parties*

Any person who wilfully files a complaint of a disciplinary offense against a trustee or an actual manager of a trust company may be required by the Professional Ethics Committee to bear all or part of the costs of the disciplinary proceedings.

Art. 50

*Supplementary procedural provisions*

Unless this Act provides otherwise and the application of the provisions of the Code of Criminal Procedure is compatible with the principles and peculiarities of the disciplinary proceedings, the provisions of the Code of Criminal Procedure shall apply mutatis mutandis to the disciplinary proceedings.

VII. Organization and implementation

A. General

Art. 51

*Organs*

The implementation of this law is entrusted to:

- (a) the FMA;
- a) the auditor or the auditing company;
- b) the Board of Trustees;
- c) the disciplinary bodies;

d) the board of examiners for trustees.

Art. 52

*Processing of personal data*

1) The FMA and the other competent domestic authorities and agencies may disclose personal data, including personal data on criminal convictions and criminal offenses of the persons subject to this Act.

The data shall be processed or allowed to be processed by persons subject to this Act, insofar as this is necessary for the fulfillment of their tasks under this Act.

2) The duty to inform and the duty to notify of the Board of Trustees pursuant to Art. 14 and 34 of Regulation (EU) 2016/679 as well as the right of the person concerned to information vis-à-vis the Board of Trustees pursuant to Art. 15 of Regulation (EU) 2016/679 do not apply insofar as their fulfillment would disclose information that must be kept secret due to overriding legitimate interests of the Board of Trustees or third parties. Art. 33 para. 2 and Art. 34 para. 2 of the Data Protection Act shall apply mutatis mutandis.

Art. 53

*Official Secrets*

1) The bodies entrusted with the implementation of this Act and any other persons called in by them shall be subject to official secrecy for an unlimited period of time with regard to confidential information that becomes known to them in the course of their official activities.

2) Information subject to official secrecy may not be disclosed. Criminal law provisions and special statutory provisions are reserved.

B. FMA

1. Tasks and powers

Art. 54

*Tasks*

1) The FMA is responsible for supervising trustees and trust companies. It is responsible in particular for:

- a) the granting, revocation and withdrawal of permits;
- b) verifying compliance with the licensing requirements and carrying out appropriate checks;

- c) admission to the trustee, supplementary and qualifying examinations;
  - d) the maintenance of a register of licensed trustees and trust companies;
  - e) cooperation with domestic and foreign authorities;
  - f) the punishment of violations under Art. 81;
  - g) the review of the audit report in accordance with Art. 61b Para. 3.
- 2) The FMA may engage third parties for the purpose of securing and fulfilling its duties. The third parties engaged shall be released from the duty of secrecy vis-à-vis the FMA.

Art. 55

*Powers*

- 1) The FMA may take the necessary measures to fulfill its supervisory and control duties.
- 2) It may in particular:
  - a) require from trustees and trust companies and their employees all information and documents necessary for the enforcement of this Act;
  - b) Require the discontinuance of a practice in violation of this Act or regulations issued thereunder;
  - c) impose a temporary ban on the exercise of activities as a trustee or trust company;
  - d) demand the removal of a natural person from the management body of the trust company;
  - e) Decisions and orders issued.
- 3) If the FMA becomes aware of violations of this Act or of other irregularities, it shall take the measures necessary to restore the lawful situation and to remedy the irregularities.
- 4) The FMA is authorized to carry out or have carried out inspections at the business premises of trustees and trust companies if it suspects a violation of the provisions of this Act, if there are indications of such a violation or for the protection of clients (on-site inspection). The costs incurred shall be borne by the trustee or trust company if a violation of supervisory provisions is discovered; in all other cases, the costs shall be borne by the state.

5) If there is reason to believe that an activity subject to this Act is being carried out without a license, the FMA may demand information and documents from the persons concerned as well as from third parties, as if they were subject persons.

6) The FMA may, in an appropriate manner, inform the public that a na- mally named person or a company is not authorized to carry out an activity under this Act.

Art. 56

*Supervisory duties and fees*

The supervisory levies and fees are based on the financial market supervision legislation.

2. Cooperation with Domestic Authorities and the Board of Trustees Art. 57

*Principle*

1) Within the scope of its supervision, the FMA cooperates with domestic authorities, the Fiduciary Chamber and the Professional Ethics Committee to the extent necessary for the fulfillment of its duties.

2) The competent domestic authorities and agencies shall transmit data to each other in accordance with Art. 52 to the extent necessary for the performance of their duties.

Art. 58

*Cooperation of the courts and the public prosecutor's office with the FMA*

1) The courts shall forward to the FMA, without being requested to do so, all decisions of a disciplinary, insolvency, execution, or criminal nature that the FMA requires to fulfill its duties under this Act. They shall inform the FMA of the initiation of corresponding proceedings.

2) The Office of the Public Prosecutor shall inform the FMA of the initiation and commencement of criminal proceedings and provide information on these proceedings.

3) The FMA shall provide the public prosecutor's office and the court, ex officio or upon request, with information that the latter requires to fulfill its duties.

Art. 59

*Cooperation of the Office of Justice with the FMA*

1) The FMA shall inform the Office of Justice of the granting, revocation, expiration and withdrawal of the license, as well as of the temporary prohibition of the exercise of activities as a trustee or trust company.

2) The Office of Justice shall provide the FMA, ex officio or upon request, with all documents and information required by the FMA to fulfill its duties under this Act.

3. Cooperation with foreign authorities Art. 60

*Principle*

1) The FMA shall provide administrative assistance to a competent foreign authority or may in turn request administrative assistance from a competent foreign authority to the extent necessary to implement this Act.

2) The subject of administrative assistance is all information and documents required for the performance of supervisory activities over trustees and trust companies as well as persons who should have a corresponding license.

3) Within the scope of its supervision, the FMA may transmit information to the competent foreign authorities if:

a) the requested information is demonstrably necessary for the supervisory activities of the requesting foreign authority;

b) sovereignty, security, public order or other essential national interests are not violated;

c) the recipients or the persons employed and authorized by the competent foreign authority are subject to an equivalent duty of confidentiality;

d) it is ensured that the information provided is only used for financial market supervisory purposes;

e) the information is only forwarded for those purposes to which the FMA has given its prior written consent; and

f) in the case of information originating from abroad, express consent has been obtained from the authority transmitting this information.

and it is ensured that these are only disclosed for those purposes to which this authority has expressly consented.

4) In all other respects, Art. 26b FMAG shall apply to cooperation with foreign authorities subject to Art. 61 of this Act.

Art. 61



*Administrative assistance without formal procedure*

- 1) Information referred to in Articles 5, 6, 14, 19, 23 to 25 and 47 paragraph 4 may be transmitted without a formal procedure under the conditions specified in Article 60 paragraph 3.
- 2) The information pursuant to par. 1 may also be transmitted without formal proceedings if the corresponding proceedings have not yet been legally concluded; the FMA shall expressly draw the requesting foreign authority's attention to this circumstance.
- 3) The FMA shall inform the data subject without delay of the transmission of the information pursuant to par. 1 or 2.

B. Auditor and auditing company Art. 61a

*Order*

Trustees and trust companies shall appoint an auditor or an auditing company that has a license under the Auditors Act or is registered under Art. 69 of the Auditors Act.

Art. 61b

*Tasks*

- 1) Auditors and auditing companies shall in particular verify:
  - a) Continued compliance with the conditions of approval;
  - b) compliance with professional duties, with the exception of the duties under Art. 20;
  - c) the annual report consisting of the financial statements and the annual report.
- 2) Art. 21 shall apply *mutatis mutandis* to the duty of secrecy of auditors and auditing companies.
- 3) The results of the audits pursuant to paragraph 1 shall be summarized in a written audit report. This report shall be submitted to the FMA no later than six months after the end of the financial year.

Art. 61c

*Notification requirements*

1) Auditors and auditing companies must immediately report to the FMA in writing all facts and decisions of which they become aware in the performance of their duties and which, in particular:

- a) could constitute a violation of the licensing requirements;
- b) could constitute a breach of professional duties, with the exception of the duties under Art. 20;
- c) might suspect a person entrusted with the management or administration of a trust company of a criminal offense; or
- d) could lead to the audit opinion being qualified, refused or not issued.

2) If the auditor or auditing firm discovers violations of the Code of Professional Conduct in the course of the audit, he or she reports them to the Professional Ethics Committee.

3) Complaints must in any case be included in the audit report to be prepared under this Act.

4) Any person who, as an auditor or auditing company, makes reports pursuant to paragraphs 1 and 2 in good faith shall not be in breach of any contractual or statutory duty of confidentiality and shall be released from any liability in connection therewith.

#### C. Liechtenstein Chamber of Trustees

##### Art. 62

###### *Composition and legal form*

- 1) The Liechtenstein Board of Trustees (Board of Trustees) is formed by the admitted trustees and trust companies.
- 2) The Chamber of Trustees is a public corporation. It is subject to the supervision of the government to ensure its legality.

##### Art. 63

###### *Tasks*

- 1) The Board of Trustees is responsible for safeguarding the reputation and rights and monitoring the duties of the Board of Trustees.
- 2) The Board of Trustees shall conduct its business through the Executive Board, unless such business is expressly assigned to the Plenary Assembly.

##### Art. 64

*Plenary Assembly*

- 1) The following matters are assigned to the Plenary Assembly:
  - a) the election of the President, the Vice-President and the other members of the Board of Directors;
  - b) the election of an auditor;
  - c) the election of the members and substitute members of the Professional Ethics Committee and the investigator;
  - d) the adoption of the Rules of Procedure;
  - e) the determination of the annual dues of the members of the Chamber to cover the administrative costs;
  - f) the approval of the budget, revenues and expenditures;
  - g) the approval of the annual financial statements;
  - h) the issuance of the Code of Professional Conduct;
  - i) the issuance of further guidelines.
- 2) The plenary assembly has a quorum if at least one quarter of the chamber members are present. It passes its resolutions by simple majority.
- 3) The Rules of Procedure of the Board of Trustees shall require the approval of the Government in order to be legally effective.

## Art. 65

*Board of Directors*

- 1) The Board of Directors of the Chamber of Trustees shall consist of at least five members.
- 2) The President, the Vice-President and the other members of the Board are elected from among the members of the Chamber by an absolute majority of the votes cast by those present. The term of office is three years. Re-election is permitted.
- 3) The scope of the Board includes:
  - a) dealings with authorities, in particular the FMA, and third parties;
  - b) the collection and payment of the annual dues of the members of the Chamber;
  - c) the settlement of disputes between members of the Chamber;
  - d) the preparation of business and the convening of the Plenary Assembly;
  - e) the execution of the decisions of the Plenary Assembly;
  - f) the preparation of legislative proposals and expert opinions on draft legislation;

- g) the nomination of a member of the Board of Examiners for Trustees;
- h) the organization of educational and training events or the cooperation with other sponsors of such events;
- i) cooperation with foreign trustee organizations.

Art. 66

*Membership fee and subscription*

- 1) Trustees and trust companies pay a fixed annual membership fee.
- 2) The membership fee for trust companies consists of:
  - a) an annual fixed contribution; and
  - b) an annual variable contribution based on the number of employees.
- 3) The legally valid contribution notice is an execution title within the meaning of the Execution Statute.

Art. 67

*Publications of the Chamber of Trustees*

The rules of procedure of the Board of Trustees as well as its rules of professional conduct shall be published on its homepage.

D. Disciplinary bodies Art. 68

*Disciplinary bodies*

Bodies in disciplinary proceedings are:

- a) the Professional Ethics Committee;
- b) the investigator.

Art. 69

*Appointment of the Professional Ethics Committee and the investigator*

- 1) The Plenary Assembly of the Board of Trustees appoints for a term of three years:
  - a) a professional committee from among its members;
  - b) an investigator who fulfills the requirements according to Art. 5 Para. 1 Letters a to d.
- 2) The Professional Ethics Committee consists of a chairman and two assessors as well as three substitute members.

3) If the Professional Ethics Committee cannot carry out its activities due to reasons of exclusion or refusal (Art. 40), the Board of Directors of the Professional Ethics Committee shall appoint further substitute members from the group of persons mentioned in para. 1 let. a for a specific case. This shall apply mutatis mutandis to the substitute appointment of the investigator.

4) The members of the Board of Trustees are obliged to accept their election to the Professional Ethics Committee and as investigators.

Art. 70

*Resolution of the Professional Ethics Committee*

The Professional Ethics Committee decides by majority vote in the composition of its chairman, one assessor and the instructor.

Art. 71

*Tasks of the Professional Ethics Committee*

1) The Professional Ethics Committee decides in disciplinary proceedings. It is responsible for imposing disciplinary sanctions and ordering interim measures.

2) For individual disciplinary proceedings, the Professional Ethics Committee shall appoint an instructor from among its members who shall be responsible for conducting the proceedings.

3) The Professional Ethics Committee is independent of instructions in the performance of its duties.

Art. 72

*Tasks of the investigator*

1) The investigator is responsible for receiving reports.

2) It performs the function of a prosecutor at the Professional Ethics Committee.

Art. 73

*Cooperation with the courts and administrative authorities*

1) The Professional Ethics Committee shall cooperate with the courts and administrative authorities to the extent necessary for the performance of its duties.

2) The courts and administrative authorities shall inform the Professional Ethics Committee of the initiation of criminal or supervisory proceedings; such information may be deferred if disclosure of the initiation of the proceedings could complicate the investigation.

3) If, because of the facts on which a disciplinary offense is based, a

criminal proceedings or proceedings before the FMA are pending, or if such proceedings have been concluded, the professional

Commission shall have the right to inspect the relevant procedural files.

E. Examination Board for Trustees Art. 74

*Appointment and tasks*

- 1) The Board of Examiners for Trustees is appointed by the government for a term of four years. It consists of five members and the same number of substitute members. It must include a district court judge, a trustee, an auditor, a tax expert and an asset manager. The government appoints the chairman.
- 2) The members of the examination board are independent in the exercise of their office.
- 3) The examination board is responsible for conducting the trustee examination, the supplementary examination and the aptitude examination.
- 4) The government shall regulate the details by ordinance.

VIII. Legal remedies and out-of-court dispute resolution

A. Appeals

Art. 75

*Appeal against decisions of the FMA*

- 1) Appeals against decisions and orders of the FMA may be lodged with the FMA Complaints Commission within 14 days of notification.
- 2) Appeals against decisions and orders of the FMA Complaints Commission may be lodged with the Administrative Court within 14 days of notification.

Art. 76

*Appeal against decisions of the Professional Ethics Committee*

- 1) Unless otherwise provided for in this Act, an appeal against a decision of the Professional Ethics Committee may be lodged with the Supreme Court by the person concerned or the investigating person within 14 days of notification.
- 2) Appeals against decisions under para. 1 shall have a suspensive effect, unless the Professional Ethics Committee determines otherwise on the basis of the public interest.

Art. 77

*Appeal against decisions of the Board of Directors of the Chamber of Trustees*

- 1) Appeals against decisions and orders of the Board of Trustees may be lodged with the Government within 14 days of notification.
- 2) Appeals against decisions of the Government may be lodged with the Administrative Court within 14 days of service.

Art. 78

*Appeal against decisions of the board of examiners*

- 1) Appeals against decisions of the Board of Trustees may be lodged with the Government within 14 days from the date of notification.
- 2) Appeals against decisions of the Government may be lodged with the Administrative Court within 14 days of service.
- 3) The power of review of the government and the Administrative Court is limited to questions of law and fact. The discretionary power is reviewed exclusively in terms of law.

B. Out-of-court dispute resolution

Art. 79

*Out-of-court conciliation board*

- 1) For the settlement of disputes between clients and trustees or trust companies, the Government shall designate a conciliation body by ordinance.
- 2) The task of the conciliation board is to mediate between the parties in a suitable manner in the event of a dispute and in this way to bring about an agreement between the parties.
- 3) If no agreement can be reached between the parties, they shall be referred to the ordinary legal process.
- 4) The Government shall regulate the details, in particular the organizational structure, composition and procedure, by ordinance.

IX. Penal provisions

Art. 80

*Misdemeanors*

- 1) Any person who unauthorizedly carries out an activity as defined in Art. 2 on a businesslike basis shall be punished by the regional court for a misdemeanor with imprisonment of up to one year or with a fine of up to 360 daily penalty units.
- 2) The district court shall punish for misdemeanor with imprisonment for a term not exceeding six months or with a fine not exceeding 180 daily penalty units who:
  - a) uses the professional title "Fiduciary" or a professional or business title of the same name or a professional or business title or company name not approved by the FMA without authorization;
  - b) as an auditor or auditing company, grossly violates the duties pursuant to Art. 61b and 61c, in particular makes false statements in the audit report or conceals material facts or fails to submit prescribed reports and notifications.
- 3) In the case of negligent commission, the upper penalty limits are reduced to half.
- 4) The penalty shall not relieve the person from the obligation to comply with the conditions and requirements imposed by this Act and the special orders.
- 5) The liability of legal persons for misdemeanors shall be governed by §§ Sections 74a et seq. of the Criminal Code.

Art. 81

*Transgressions*

- 1) The FMA will punish with a fine of up to 100,000 Swiss francs anyone who:
  - a) violates the duties of disclosure, notification, approval, notification or reporting vis-à-vis the FMA or appointed third parties, or fails to comply with them in full or with a delay (Articles 22, 32 and 34);
  - b) fails to comply, fails to comply completely or fails to comply in a timely manner with a request to restore the lawful state of affairs or with any other order of the FMA;
  - c) fails to comply with a request to cooperate in an investigation or administrative assistance procedure of the FMA;
  - d) violates the requirements or conditions attached to a permit;
  - e) does not keep the books of account properly or does not keep the books of account or documents;
  - f) violates the provisions on conflicts of interest (Art. 21a);



- g) violates the provisions on outsourcing (Art. 21b);
- h) violated the provisions on governance (Art. 22a), internal control (Art. 22b) and risk management (Art. 22c);
- i) does not have the external audit or an audit prescribed by the FMA carried out in accordance with the regulations or does not fulfill its obligations towards the auditor or auditing company (Art. 22e);
- k) unauthorizedly offers an activity in accordance with Art. 2 on a businesslike basis.
- 2) The penalty shall not relieve the person from the obligation to comply with the conditions and requirements imposed by this Act and the special orders.
- 3) The FMA shall impose the fine pursuant to par. 1 on a legal entity if the violation is committed in the course of business activities of the legal entity (offense) by persons who acted either alone or as members of the board of directors, the executive board, the management board or the supervisory board of the legal entity or on the basis of another management position within the legal entity or on the basis of an agency or other mandate relationship by virtue of which they:
- a) are authorized to represent the legal entity externally;
- b) Exercise supervisory authority in a managerial position; or
- c) otherwise exercise significant influence on the management of the legal entity.
- 4) The legal person shall be liable to prosecution under subsection 1 only if it has failed, through the persons referred to in subsection 3, to take the necessary and reasonable measures to prevent such inciting acts.
- 5) The liability of the legal person for the incidental offense and the criminal liability of the persons mentioned in para. 3 for the same offense are not mutually exclusive. The FMA may refrain from punishing a natural person if a fine has already been imposed on the legal person for the same violation and there are no special circumstances that preclude refraining from punishment.
- 6) In the case of negligent commission, the upper limit of the penalty under subsection 1 shall be reduced to half.

Art. 82

*Limitation*

The statute of limitations for prosecution is three  
years.

Art. 83

*Responsibility*

If offences are committed in the business operations of a legal entity, a general partnership or a limited partnership, the criminal provisions shall apply to the persons acting on its behalf.

or should have acted, but with joint and several liability of the legal person or the company for fines and penalties.

X. Transitional and final provisions Art. 84

*Executive Orders*

The Government shall issue the regulations necessary for the implementation of this Act.

Art. 85

*Repeal of previous law*

It is repealed:

- a) Act of December 9, 1992, on Trustees (Trustees Act; TrHG), LGBl. 1993 No. 42;
- b) Act of 14 September 1994 concerning the amendment of the Act on Trustees, LGBl. 1994 No. 66;
- c) Act of 16 December 1994 concerning the amendment of the Act on Trustees, LGBl. 1995 No. 24;
- d) Act of March 23, 1995, on the Amendment of the Act of December 9, 1992, on Trustees, LGBl. 1995 No. 107;
- e) Act of October 31, 1995, concerning the amendment of the Act on Trustees, LGBl. 1995 No. 230;
- f) Announcement of 10 June 1997 of the repeal of provisions of the Law of 9 December 1992 on Trustees by the decision of the Liechtenstein Constitutional Court of 24 April 1997 (StGH 1996/35), LGBl. 1997 No. 121;
- g) Act of October 21, 1999, on the Amendment of the Act on Trustees, LGBl. 1999 No. 241;
- h) Act of November 22, 2002, on the Amendment of the Act on Trustees, LGBl. 2003 No. 22;

- i) Act of June 18, 2004, on the Amendment of the Act on Fiduciaries, LGBl. 2004 No. 185;
- k) Act of November 25, 2005, on the Amendment of the Act on Trustees, LGBl. 2005 No. 282;
- l) Act of 26 April 2007 on the Amendment of the Act on Fiduciaries, LGBl. 2007 No. 156;
- m) Act of May 23, 2007, on the Amendment of the Act on Fiduciaries, LGBl. 2007 No. 178;
- n) Act of May 29, 2008, on the Amendment of the Trustees Act, LGBl. 2008 No. 193;
- o) Act of October 20, 2010, on the Amendment of the Trustees Act, LGBl. 2010 No. 391.

#### Art. 86

##### *Permits and authorizations under previous law*

- 1) All authorizations and designated entitlements granted on the basis of previous law shall remain in force subject to paragraph 2.
- 2) Persons who have a license under the previous law but are not carrying on their business activity at the time this Act comes into force must provide proof of the conclusion of liability insurance or other financial security within the meaning of Art. 11 within a period of three years. If the deadline is not met, the license shall expire.
- 3) Persons who, at the time of the enactment of this Act, perform the function of a manager of a trust company shall continue to be authorized to act as an actual manager of a trust company.
- 4) Existing liability insurance policies must be adapted to the provision of Art. 11 within six months of the entry into force of this Act. If the deadline is not met, the license shall expire. In justified cases, the FMA may, upon application, reasonably extend the deadline.

#### Art. 87

##### *Reporting requirements*

- 1) Qualified participations must be reported to the FMA in writing within one year of the entry into force of this Act, stating the amount of the participation and the holder of the participation.

2) Business activities carried on at the time of the entry into force of this Act within the scope of a foreign representative office, branch and subsidiary pursuant to Article 34 shall be reported to the FMA in writing within one year of the entry into force of this Act.

3) The obligation to report and provide information pursuant to Art. 22 shall also apply to criminal court and supervisory authority proceedings pending at the time of the entry into force of this Act.

Art. 88

*Disciplinary proceedings under previous law*

The previous law shall apply to disciplinary proceedings opened before the entry into force of this Act or opened by January 1, 2015.

Art. 89

*Entry into force*

1) This Act shall enter into force on 1 January 2014, subject to para. 2 and the unused expiry of the referendum period, otherwise on the day following its promulgation.

2) Articles 35 to 50 and 68 to 73 and 76 shall enter into force on January 1, 2015.

Law

from 6 September 2018  
on the amendment of the Trustees Act

...

II.

Transitional provision

Permits and intended authorizations issued under previous law remain in effect.

...

Law

from 5 March 2020  
on the amendment of the Trustees Act

...

II.

Transitional provisions

1) Trustees and trust companies which, at the time of the entry into force of this Act, have a license under the previous law must provide proof of the appointment of an auditor or auditing company in accordance with Article 5 paragraph 1 letter i and Article 14 paragraph 1 letter h by 1 January 2021 at the latest.

2) Until the entry into force of the Law on Auditors (WPG) of December 5, 2018, auditors and auditing companies (auditing companies) may be appointed to perform external audits if they are licensed in accordance with the Law of December 5, 2018.

December 9, 1992 on Auditors and Auditing Companies (WPRG).

3) The provisions on accounting and reporting under Arts. 22d and 22e and 61b and 61c shall apply for the first time to financial years beginning after December 31, 2020.

4) The previous law applies to pending proceedings.

III.

Entry into force

1) This Act shall enter into force on July 1, 2020, subject to subsection 2 and the unused expiry of the referendum period, otherwise on the day following its promulgation.

2) Art. 21a para. 1 let. b, Art. 21b and Art. 22a to 22c shall enter into force on 1 January 2021.

## **XIX. UN Sales Convention**

Convention

of the United Nations on Contracts for the International Sale of Goods

United Nations Convention on Contracts for the International Sale of Goods  
(CISG)

Completed in Vienna on April 11, 1980

Approval of the Diet: September 6, 2018.

Entry into force for the Principality of Liechtenstein: 1 May

2020 The States Parties to this Convention,

Having regard to the general objectives of the Resolutions adopted by the Sixth Extraordinary Session of the General Assembly of the United Nations on the Establishment of a New World Economic Order,

Considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations between States,

Believing that the adoption of uniform provisions applicable to contracts for the international sale of goods, taking into account the various social, economic and legal systems, would help to eliminate legal obstacles to international trade and promote its development,

have agreed on the following:

### Part I

#### Scope of application and general provisions Chapter I

##### Scope of application

##### Art. 1

1) This Convention shall apply to contracts for the sale of goods between parties who have their place of business in different countries,

a) if these states are contracting states or

b) if the rules of private international law lead to the application of the law of a contracting state.

2) The fact that the parties are established in different countries shall not be taken into account if it does not result from the contract, from previous business relations or from negotiations or information held between or provided by the parties before or at the time of conclusion of the contract.

have been.

3) In applying this Convention, no account shall be taken of the nationality of the parties, whether they are merchants or non-merchants, or whether the contract is of a commercial or civil nature.

#### Art. 2

This Agreement does not apply to the purchase

- a) of goods for personal, family or household use, unless the seller neither knew nor should have known before or at the time of conclusion of the contract that the goods were purchased for such use;
- b) at auctions;
- c) due to execution or other judicial measures;
- d) of securities or cash;
- e) of sea-going vessels, inland waterway vessels, hovercrafts or aircraft;
- f) of electrical energy.

#### Art. 3

1) Contracts for the supply of goods to be manufactured or produced shall be deemed to be equivalent to purchase contracts, unless the Purchaser is required to supply a substantial part of the materials necessary for the manufacture or production itself.

2) This Convention shall not apply to contracts in which the predominant part of the obligations of the party delivering the goods consists in the performance of works or other services.

#### Art. 4

This Agreement exclusively governs the conclusion of the purchase contract and the rights and obligations of the Seller and the Buyer arising therefrom. Unless otherwise expressly stipulated in this Agreement, it does not concern in particular

- a) the validity of the contract or individual contractual provisions or the validity of commercial practices;
- b) the effects that the contract may have on the ownership of the goods sold.

#### Art. 5

This Convention shall not apply to the Seller's liability for the death of or personal injury to any person caused by the Goods.

Art. 6

The Parties may exclude the application of this Agreement or, subject to Article 12, derogate from or modify the effect of its provisions.

Chapter II General provisions

Art. 7

1) In interpreting this Convention, account shall be taken of its international character and of the need to ensure its uniform application and to promote the preservation of good faith in international trade.

2) Questions concerning matters governed by this Convention but not expressly decided in this Convention shall be decided in accordance with the general principles underlying this Convention or, in the absence of such principles, in accordance with the law applicable under the rules of private international law.

Art. 8

1) For the purposes of this Convention, declarations and other conduct of a party shall be interpreted in accordance with that party's intention if the other party knew or could not have been unaware of that intention.

2) If subsection 1 is not applicable, statements and other conduct of a party shall be construed as a reasonable person in the same position as the other party would have understood them under the same circumstances.

3) In order to determine the will of a party or the view that a reasonable person would have had, all relevant circumstances must be taken into account, in particular the negotiations between the parties, the customs that arose between them, the commercial practices and the subsequent conduct of the parties.

Art. 9

1) The parties are bound by the commercial customs with which they have agreed and by the customs which have arisen between them.

2) Unless otherwise agreed by the parties, it shall be presumed that in their contract or at the time of its conclusion they implicitly referred to trade customs which they knew or ought to have known and which are customary in the international



trade are widely known and regularly observed by the parties to such contracts in the relevant line of business.

#### Art. 10

For the purposes of this Convention,

- a) if a party has more than one place of business, the place of business which, taking into account the circumstances known to or contemplated by the parties before or at the time of the conclusion of the contract, has the closest connection with the contract and its performance shall be decisive;
- b) if a party has no place of business, its habitual residence shall be decisive.

#### Art. 11

The purchase agreement does not need to be concluded or proven in writing and is not subject to any other formal requirements. It may be evidenced in any way, including by witnesses.

#### Art. 12

The provisions of Articles 11 and 29 or of Part II of this Convention which permit a form other than written form for the conclusion of a contract of sale, its modification or cancellation by agreement, or for an offer, acceptance or other declaration of intention, shall not apply if a party has his place of business in a Contracting State which has made a declaration in accordance with Article 96. The parties may not derogate from this Article or modify its effect.

CISG

#### Art. 13

For the purposes of this Convention, the term "in writing" shall include communications by telegram or telex.

### Part II Conclusion of the contract

#### Art. 14

- 1) A proposal to conclude a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and expresses the will of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it specifies the goods and expressly or implicitly fixes the quantity and the price or enables them to be fixed.
- 2) A proposal that is not directed to a specific person or persons,

is considered an invitation to make an offer only if the person making the proposal does not clearly express the opposite.

Art. 15

- 1) An offer becomes effective as soon as it is received by the recipient.
- 2) An offer, even if irrevocable, may be withdrawn if the withdrawal notice is received by the recipient before or at the same time as the offer.

Art. 16

- 1) Until the contract is concluded, an offer may be revoked if the revocation reaches the recipient before the latter has sent a declaration of acceptance.
- 2) However, an offer cannot be revoked,
  - a) if it expresses by stipulating a fixed period for acceptance or otherwise that it is irrevocable, or
  - b) if the recipient could reasonably rely on the offer being irrevocable and acted in reliance on the offer.

Art. 17

An offer expires, even if it is irrevocable, as soon as the offering party receives a rejection.

Art. 18

- 1) A statement or other conduct of the recipient that expresses an acceptance of the offer constitutes an acceptance. Silence or inaction alone shall not constitute acceptance.
- 2) The acceptance of an offer shall become effective as soon as the offeror receives the expression of consent. It shall not become effective if the offeror does not receive the expression of consent within the time limit set by him or, in the absence of such a time limit, within a reasonable time limit, taking into account the circumstances of the transaction, including the speed of the means of transmission chosen by the offeror.

The type of offer must be taken into account. A verbal offer must be accepted immediately unless the circumstances indicate otherwise.

- 3) However, if the consignee, on the basis of the offer, the practices established between the parties or the commercial customs, expresses his consent by an act relating, for example, to the dispatch of the goods or to the

payment of the price refers, without informing the offeror, the acceptance is effective at the time of the act, provided that it is made within the period prescribed in paragraph 2.

#### Art. 19

1) A response to an offer which is intended to constitute an acceptance but which contains additions, restrictions or other changes is a rejection of the offer and constitutes a counteroffer.

2) However, a response to an offer which is intended to constitute an acceptance but which contains additions or deviations which do not materially change the terms of the offer shall constitute an acceptance if the offeror does not immediately object orally to the lack of conformity or sends a notice to that effect. If he fails to do so, the conditions of the offer with the changes contained in the acceptance shall constitute the content of the contract.

3) Additions or deviations relating in particular to the price, payment, quality and quantity of the goods, to the place and time of delivery, to the extent of the liability of one party to the other or to the settlement of disputes shall be deemed to substantially change the terms of the offer.

#### Art. 20

1) An acceptance period set by the offeror in a telegram or letter shall commence upon posting of the telegram or upon the date indicated in the letter or, if no date is indicated, upon the date indicated on the envelope. An acceptance period set by the offeror by telephone, telex or other immediate means of transmission shall begin to run as soon as the offer reaches the recipient.

2) Public holidays or non-working days that fall within the term of the acceptance period shall be counted in the calculation of the period. However, if the notification of acceptance cannot be sent on the last day of the period to the

If the notice period cannot be delivered to the offeror's address because this day falls on a public holiday or a non-working day at the offeror's place of business, the period shall be extended until the first following working day.

#### Art. 21

1) A delayed acceptance shall nevertheless be effective as an acceptance if the offeror immediately informs the acceptor orally in this sense or sends a corresponding written notification.

2) If it appears from the letter or other writing containing a late acceptance that, under the circumstances under which it was mailed, the notice would have been received by the offeror in due time if it had been sent in the ordinary course, the late acceptance shall be effective as an acceptance unless the offeror promptly notifies the acceptor orally that it considers its offer to have expired or sends written notice to that effect.

Art. 22

An acceptance may be withdrawn if the notice of withdrawal is received by the offeror before or at the time the acceptance would have become effective.

Art. 23

A contract shall be deemed to have been concluded at the time when the acceptance of an offer under this Agreement becomes effective.

Art. 24

For the purposes of this Part of the Convention, an offer, declaration of acceptance or other expression of intention is "received" by the addressee if it is made to him orally or if it is otherwise delivered to him personally, at his place of business or postal address or, in the absence of such addresses, at his habitual residence.

Part III

Purchase

of goods

Chapter I General provisions

Art. 25

A breach of contract committed by a party is material if it results in such detriment to the other party that it substantially deprives the other party of what it should have expected under the contract, unless the breaching party did not foresee such consequence and a reasonable person in the same position would not have foreseen such consequence under the same circumstances.

Art. 26

A declaration that the contract is cancelled shall be effective only if it is communicated to the other party.

Art. 27

Except as otherwise expressly provided in this Part of the Convention, in the case of a notice, demand or other communication given by a Party under this Part by the means appropriate in the circumstances, a delay or error in giving the communication or its non-receipt shall not deprive that Party of the right to rely on the communication.

#### Art. 28

Where a party is entitled under this Convention to require performance of an obligation by the other party, a court need not give a judgment for performance in nature unless it would do so under its own law in respect of similar contracts of sale not covered by this Convention.

#### Art. 29

- 1) A contract may be amended or terminated by mere agreement of the parties.
- 2) If a written contract contains a provision that any modification or cancellation by agreement must be in writing, it may not be modified or cancelled in any other way. However, a party may be precluded by its conduct from relying on such a provision to the extent that the other party has relied on that conduct.

#### Chapter II Obligations of the seller

#### Art. 30

In accordance with the contract and this agreement, the seller is obliged to deliver the goods, to hand over the documents relating to them and to transfer ownership of the goods.

#### Section I

#### Delivery of the goods and handing over of the documents Art. 31

If the seller does not have to deliver the goods to another specified place, his obligation to deliver shall be as follows:

- a) If the contract of sale requires the goods to be transported, the seller shall hand them over to the first carrier for transmission to the buyer;
- b) in cases not covered by subparagraph (a), the contract relates to specific goods or to goods designated by category which are to be selected from a specific stock.

or to goods to be manufactured or produced and the parties knew at the time of the conclusion of the contract that the goods were located at a certain place or were to be manufactured or produced there, the seller shall make the goods available to the buyer at that place;

c) in other cases, the Seller shall make the goods available to the Buyer at the place where the Seller had its place of business when the contract was concluded.

Art. 32

1) If, under the contract or this Convention, the seller transfers the goods to a carrier and the goods are not clearly identified to the contract by marks affixed thereto or by transport documents or otherwise, the seller shall notify the buyer of the shipment and, in doing so, identify the goods in detail.

2) If the seller has to arrange for the carriage of the goods, he shall conclude the contracts necessary for their carriage to the place stipulated by means of carriage which are reasonable in the circumstances and under the usual conditions for such carriage.

3) If the Seller is not obligated to take out transport insurance, it shall provide the Buyer, at the Buyer's request, with all information available to it and necessary for taking out such insurance.

Art. 33 The seller shall deliver the goods:

a) if a point in time is determined in the contract or can be determined on the basis of the contract, at that time;

b) if a period is determined in the contract or can be determined on the basis of the contract, at any time within this period, unless it is clear from the circumstances that the buyer has to choose the time, or

c) in all other cases within a reasonable period after conclusion of the contract.

Art. 34

If the seller has to hand over documents relating to the goods, he shall hand them over at the time, place and in the form provided for in the contract. If the seller has already handed over the documents, he may remedy any lack of conformity of the documents up to the time provided for the handover, if the exercise of this right does not cause unreasonable inconvenience or disproportionate costs to the buyer.

However, the Buyer retains the right to claim damages under this Agreement.

## Section II

### Conformity of the goods with the contract and rights or claims of third parties Art. 35

- 1) The Seller shall deliver goods that meet the requirements of the contract in terms of quantity, quality and type as well as packaging or container.
- 2) If the parties have not agreed otherwise, the goods shall only comply with the contract:
  - a) if it is suitable for the purposes for which goods of the same kind are usually used;
  - b) if it is fit for a particular purpose, which was brought to the Seller's attention expressly or otherwise at the time of the conclusion of the contract, unless it appears from the circumstances that the Buyer did not or could not reasonably rely on the Seller's expertise and judgment;
  - c) if it has the characteristics of goods that the seller has presented to the buyer as a sample or specimen;
  - d) if it is packaged in the manner customary for goods of this type or, if there is no such manner, in a manner appropriate for the preservation and protection of the goods.
- 3) The seller shall not be liable under subsection 2(a) to (d) for any lack of conformity of the goods if the buyer knew or could not have been unaware of such lack of conformity at the time of conclusion of the contract.

### Art. 36

- 1) The Seller shall be liable under the Contract and this Convention for any lack of conformity existing at the time the risk passes to the Buyer, even if the lack of conformity becomes apparent after that time.
- 2) The Seller shall also be liable for a lack of conformity which occurs after the time specified in paragraph 1 and which is attributable to a breach of one of its obligations, including a breach of a warranty that the goods will remain fit for their usual purpose or for a particular purpose for a certain period of time or will retain special properties or characteristics.

Art. 37

In the event of early delivery of the goods, the Seller shall retain the right, until the date fixed for delivery, to supply missing parts, to make up for a missing quantity, to supply replacements for goods not in conformity with the contract or to remedy the non-conformity of the goods supplied, if the exercise of this right does not cause unreasonable inconvenience or disproportionate costs to the Buyer. However, the Buyer shall retain the right to claim damages under this Agreement.

Art. 38

- 1) The Buyer shall inspect the goods or have them inspected within as short a period as circumstances permit.
- 2) If the contract requires transportation of the goods, the inspection may be postponed until after the arrival of the goods at the place of destination.
- 3) If the goods are diverted or forwarded by the Buyer without the Buyer having had sufficient opportunity to inspect them, and if the Seller knew or should have known of the possibility of such detour or forwarding when the contract was concluded, the inspection may be postponed until after the arrival of the goods at their new destination.

Art. 39

- 1) The Buyer shall lose the right to invoke a lack of conformity of the goods if it fails to notify the Seller of such lack of conformity within a reasonable period of time from the time when it discovered or should have discovered such lack of conformity, specifying the nature of the lack of conformity.
- 2) In any case, the Buyer loses the right to invoke the lack of conformity of the goods if he does not notify the Seller of it within two years after the goods were actually delivered to him at the latest, unless this period is incompatible with a contractual warranty period.

Art. 40

The seller may not invoke Art. 38 and 39 if the lack of conformity is based on facts which he knew or could not have been unaware of and which he did not disclose to the buyer.

Art. 41

Seller shall deliver goods that are free from any right or claim of any third party, unless Buyer has consented to the use of the goods in connection with any such right or claim.



claim. However, if such rights or claims are based on industrial or other intellectual property, Art. 42 regulates the seller's obligation.

#### Art. 42

1) The Seller shall deliver goods that are free from rights or claims of third parties that are based on industrial or other intellectual property and that the Seller knew or could not have been unaware of at the time of conclusion of the contract, provided that the right or claim is based on industrial or other intellectual property:

- a) under the law of the country in which the goods are resold or otherwise used or are intended to be used, if the parties contemplated at the time of the conclusion of the contract that the goods would be resold or used there, or
- b) in any other case according to the law of the country in which the buyer has his domicile.

2) The obligation of the seller under paragraph 1 does not extend to cases:

- a) in which the buyer knew or could not have been unaware of the right or claim at the time of the conclusion of the contract, or
- b) in which the right or claim arises from the fact that the Seller has acted in accordance with technical drawings, designs, formulas or other information provided by the Buyer.

CISG

#### Art. 43

1) The buyer may not invoke Art. 41 or 42 if he fails to notify the seller of the third party's right or claim within a reasonable period after the time from which he became aware of it.

The third party shall notify the third party of the fact that the third party had or should have had knowledge of the third party's right or claim and shall specify the nature of the third party's right or claim.

2) The seller may not invoke subsection 1 if he knew the right or claim of the third party and its nature.

#### Art. 44

Notwithstanding Art. 39 par. 1 and 43 par. 1, the buyer may reduce the price in accordance with Art. 50 or claim damages, except for loss of profit, if he has a reasonable excuse for not having given the required notice.

Section III

Rights of the buyer due to breach of contract by the seller Art. 45

- 1) If the Seller fails to perform any of its obligations under the Contract or this Transfer Agreement, the Buyer may
  - a) exercise the rights provided for in Articles 46 to 52;
  - b) claim damages in accordance with Articles 74 to 77.
- 2) The buyer does not lose the right to claim damages by exercising other rights.
- 3) If the buyer exercises a right for breach of contract, a court or arbitration tribunal may not grant the seller additional time.

Art. 46

- 1) The Buyer may demand performance of its obligations by the Seller, unless the Buyer has exercised a right incompatible with such demand.
- 2) If the goods are not in conformity with the contract, the buyer may only claim a replacement delivery if the lack of conformity constitutes a fundamental breach of contract and the replacement delivery is requested either together with a notification in accordance with Art. 39 or within a reasonable period thereafter.
- 3) If the goods are not in conformity with the contract, the buyer may request the seller to remedy the lack of conformity by repair, it  
unless this is unreasonable under consideration of all circumstances. Improvements must be requested either together with a notification pursuant to Art. 39 or within a reasonable period thereafter.

Art. 47

- 1) The Buyer may grant the Seller a reasonable grace period to fulfill its obligations.
- 2) The Buyer may not exercise any right for breach of contract before the expiry of this period, unless he has received notice from the Seller that the latter will not perform his obligations within the period so set. However, the buyer retains the right to claim damages for late performance.

Art. 48

- 1) Subject to Art. 49, the Seller may remedy a defect in the performance of its obligations even after the delivery date at its own expense, if this is

does not cause unreasonable delay and does not cause the Buyer unreasonable inconvenience or uncertainty as to the reimbursement of its expenses by the Seller. However, Buyer retains the right to claim damages under this Agreement.

2) If the seller requests the buyer to notify him whether he wishes to accept performance and the buyer does not comply with the request within a reasonable period of time, the seller may perform within the period specified in his request. The buyer may not exercise any right incompatible with the seller's performance before the expiry of this period.

3) If the seller indicates to the buyer that he will perform within a certain period, it shall be presumed that the indication contains a request to the buyer under subsection (2) to communicate his decision.

4) A request or notification by the seller under subsections 2 or 3 shall only be effective if the buyer has received it.

#### Art. 49

1) The buyer can declare the cancellation of the contract,

a) if the failure to perform an obligation incumbent on the Seller under the Contract or this Agreement constitutes a fundamental breach of the Contract; or

b) if, in case of non-delivery, the Seller fails to deliver the goods within the grace period set by the Buyer in accordance with Art. 47 par. 1 or if the Seller declares that it will not deliver within the period so set.

2) However, if the seller has delivered the goods, the buyer loses his right to declare the cancellation of the contract if he

a) in the case of late delivery, does not declare the cancellation within a reasonable period of time after learning that the delivery has been made, or

b) in the event of a breach of contract other than late delivery, does not declare the cancellation within a reasonable period of time,

i) after he knew or should have known of the breach of contract,

ii) after a period of grace set by the Purchaser in accordance with Art. 47 par. 1 has expired or after the Seller has declared that it will not perform its obligations within the period of grace, or

iii) after a time limit set by the seller in accordance with Art. 48 par. 2 has expired or after the buyer has declared that he will not accept performance.

Art. 50

If the goods are not in conformity with the contract, the buyer may, whether or not the purchase price has already been paid, reduce the price in proportion to the value of the goods actually delivered at the time of delivery to the value which the goods in conformity with the contract would have had at that time. However, if the seller remedies a defect in the performance of his obligations under Articles 37 or 48, or if the buyer refuses to accept performance by the seller under the said Articles, the buyer may not reduce the price.

Art. 51

1) If the seller delivers only a part of the goods or if only a part of the delivered goods is in conformity with the contract, Art. 46 to 50 shall apply to the part which is missing or which is not in conformity with the contract.

2) The Buyer may declare the cancellation of the entire contract only if the incomplete delivery or delivery not in accordance with the contract constitutes a material breach of contract.

Art. 52

1) If the seller delivers the goods before the specified time, the buyer is free to accept or refuse acceptance.

2) If the Seller delivers a quantity greater than the agreed quantity, the Buyer may accept the excess quantity delivered or refuse to accept it. If the Buyer accepts the excess quantity delivered in whole or in part, he shall pay for it in accordance with the contractual price.

Chapter III Obligations of the Buyer

Art. 53

The Buyer is obliged to pay the purchase price and accept the goods in accordance with the contract and this Agreement.

Section I Payment of the purchase price

Art. 54

The buyer's obligation to pay the purchase price also includes taking the measures and fulfilling the formalities required by the contract or the law so that payment can be made.

Art. 55

If a contract has been validly entered into without expressly

or tacitly fixes or allows to be fixed, it shall be presumed, in the absence of any indication to the contrary, that the parties have tacitly referred to the purchase price generally charged at the time of the conclusion of the contract for such goods sold in the relevant line of business under comparable circumstances.

Art. 56

If the purchase price is determined according to the weight of the goods, it shall be determined according to the net weight in case of doubt.

Art. 57

1) If the Buyer is not obliged to pay the purchase price at another specified place, he shall pay it to the Seller as follows:

- a) at the place of establishment of the seller or,
  - b) if the payment is to be made against delivery of the goods or documents, at the place where the delivery takes place.
- 2) The Seller shall bear all additional costs related to the payment which arise due to a change of its place of business after the conclusion of the contract.

Art. 58

1) If the buyer is not obliged to pay the purchase price at a certain time, he shall pay the price as soon as the seller has made available to him either the goods or the documents entitling him to dispose of them in accordance with the contract and this agreement. The seller may make the delivery of the goods or documents conditional upon payment.

2) If the contract requires the goods to be shipped, the seller may ship them on the condition that the goods or the documents entitling the buyer to dispose of them shall be handed over to the buyer only against payment of the purchase price.

3) The Buyer shall not be obliged to pay the purchase price before it has had the opportunity to inspect the goods, unless the delivery or payment terms agreed by the parties do not provide an opportunity to do so.

Art. 59

The Buyer shall pay the Purchase Price at the time fixed in the Contract or determinable in accordance with the Contract and this Agreement, without any demand or compliance with formalities on the part of the Seller.

Section II Adoption

Art. 60

The buyer's obligation to accept is:

- a) take all actions that may reasonably be expected of it in order to enable the Seller to make the delivery, and
- b) to take over the goods.

Section III

Rights of the seller due to breach of contract by the buyer Art. 61

- 1) If the Purchaser fails to perform any of its obligations under the Contract or this Agreement, the Seller may
  - a) exercise the rights provided for in Articles 62 to 65;
  - b) claim damages in accordance with Articles 74 to 77.
- 2) The seller does not lose the right to claim damages by exercising other rights.
- 3) If the seller exercises a right for breach of contract, a court or arbitration tribunal may not grant the buyer additional time.

Art. 62

The Seller may require the Buyer to pay the purchase price, accept the goods and fulfill its other obligations, unless the Seller has exercised a right that is incompatible with this requirement.

Art. 63

- 1) The Seller may grant the Buyer a reasonable grace period to fulfill its obligations.
  - 2) The Seller may not exercise any right for breach of contract before the expiry of this term, unless it has received notice from the Buyer that the Buyer will not perform its obligations within the term thus set.
- shall become. However, this shall not deprive the Seller of the right to claim damages for delayed performance.

Art. 64

- 1) The seller may declare the cancellation of the contract,

- 
- a) if the non-performance of an obligation incumbent upon the Buyer under the Contract or this Agreement constitutes a material breach of the Contract, or
- b) if the Purchaser fails to fulfill its obligation to pay the purchase price or accept the goods within the grace period set by the Seller pursuant to Art. 63 par. 1, or if the Purchaser declares that it will not do so within the period so set.
- 2) However, if the buyer has paid the purchase price, the seller loses his right to declare the contract cancelled if he
- a) in the event of late performance by the Purchaser, the Purchaser does not declare the cancellation before it has learned that performance has been made, or
- b) in the event of a breach of contract other than late performance by the Buyer does not declare the cancellation within a reasonable time:
- i) after the seller knew or should have known of the breach of contract, or
- ii) after a period of grace set by the seller in accordance with Art. 63 par. 1 has expired, or after the buyer has declared that he will not fulfill his obligations within the period of grace.

## Art. 65

- 1) If the contract requires the Buyer to specify the form, mass or other characteristics of the goods in more detail and the Buyer fails to do so at the agreed time or within a reasonable time after receipt of a request from the Seller, the Seller may, without prejudice to any other rights to which it is entitled, specify the goods in accordance with the Buyer's requirements, if known to it.
- 2) If the Seller makes the specification itself, it shall notify the Buyer of the details thereof and set a reasonable time limit within which the Buyer may make a different specification. If, after receipt of such notice from
- does not make use of this option within the period so set, the specification made by the Seller shall be binding.

## Chapter IV Transition of the hazard

## Art. 66

Loss of or damage to the goods after the transfer of risk to the buyer does not release the buyer from the obligation to pay the purchase price, unless the

the loss or damage is due to an act or omission of the seller.

Art. 67

1) If the contract of sale requires the goods to be transported and the seller is not obliged to hand them over at a specific place, the risk shall pass to the buyer as soon as the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is obliged to hand over the goods to the carrier at a specified place, the risk shall pass to the buyer only when the goods are handed over to the carrier at that place. If the seller is authorized to retain the documents entitling to the disposal of the goods, this shall not affect the passing of the risk.

2) However, the risk shall not pass to the Buyer until the goods are clearly assigned to the contract, whether by marks affixed to the goods, by transport documents, by notice to the Buyer or otherwise.

Art. 68

If goods in transit are sold, the risk shall pass to the buyer at the moment of conclusion of the contract. However, the risk is already transferred to the buyer at the moment of handing over the goods to the carrier who issued the documents on the transport contract, if the circumstances suggest this conclusion. If, on the other hand, the seller knew or should have known at the time of the conclusion of the contract of sale that the goods were lost or damaged and did not disclose this to the buyer, the loss or damage shall be for the seller's account.

Art. 69

1) In cases not regulated by Articles 67 and 68, the risk shall pass to the buyer as soon as he takes delivery of the goods or, if he does not take delivery of the goods in due time, at the moment when the goods are placed at his disposal and he commits a breach of contract by not taking delivery.

2) If, however, the Buyer is to take delivery of the goods at a place other than a branch of the Seller, the risk shall pass as soon as the delivery is due and the Buyer is aware that the goods are available to him at such place.

3) If the contract concerns goods that have not yet been individualized, they shall not be deemed to have been provided to the Buyer until they have been clearly assigned to the contract.



## Art. 70

If the seller has committed a fundamental breach of contract, Articles 67, 68 and 69 shall not affect the rights to which the buyer is entitled on account of such breach.

## Chapter V

Common provisions on the obligations of the seller and the buyer Section I

Anticipated breach of contract and contracts for successive deliveries

## Art. 71

1) A party may suspend the performance of its obligations if it becomes apparent after the conclusion of the contract that the other party will not perform a material part of its obligations:

- a) due to a serious defect in their ability to perform the contract or their solvency or
- b) because of their behavior during the preparation of the fulfillment or during the fulfillment of the contract.

2) If the seller has already shipped the goods before the reasons specified in paragraph 1 become apparent, he may refuse to hand over the goods.

to the buyer, even if the buyer has a document entitling him to obtain the goods. The present paragraph concerns only the rights to the goods in the relationship between the buyer and the seller.

3) If one party suspends performance before or after dispatch of the goods, it shall immediately notify the other party thereof; it shall continue performance if the other party provides sufficient security for the performance of its obligations.

## Art. 72

1) If it is obvious that one of the parties will commit a material breach of the contract before the date set for the performance of the contract, the other party may declare the contract avoided.

2) If time permits and if it is reasonable under the circumstances, the party wishing to declare the cancellation of the contract shall notify the other party thereof.

to enable it to provide sufficient security for the performance of its duties.

3) Par. 2 shall not apply if the other party has declared that it will not fulfill its obligations.

Art. 73

1) If a contract provides for successive deliveries of goods and one party commits a material breach of contract in respect of a partial delivery by failing to perform an obligation relating to that partial delivery, the other party may declare the contract avoided in respect of that partial delivery.

2) If the non-performance of an obligation relating to a partial delivery by one of the parties gives the other party reasonable grounds to assume that a material breach of contract is to be expected with respect to future partial deliveries, the other party may declare the termination of the contract for the future within a reasonable period of time.

3) A purchaser who declares the contract to be rescinded with respect to a delivery may at the same time declare the contract to be rescinded with respect to deliveries already received or with respect to future deliveries if, because of the connection between them, these deliveries can no longer be used for the purpose envisaged by the parties at the time the contract was concluded.

Section II Compensation

for Damages

Art. 74

As compensation for the breach of contract committed by one party, the loss incurred by the other party as a result of the breach of contract, including the loss of profit, shall be compensated. However, such damages shall not exceed the loss which the party in breach of contract foresaw as a possible consequence of the breach of contract at the time of the conclusion of the contract or should have foreseen taking into account the circumstances which it knew or should have known.

Art. 75

If the contract has been rescinded and the buyer has made a covering purchase or the seller has made a covering sale in a reasonable manner and within a reasonable time after the rescission, the party claiming damages may claim the difference between the price agreed in the contract and the price of the covering purchase or the covering sale as well as any other damages under Art. 74.

## Art. 76

1) If the contract has been rescinded and the goods have a market price, the party claiming damages may, if he has not made a covering purchase or a covering sale under Art. 75, claim the difference between the price agreed in the contract and the market price at the time of rescission and any further damages under Art. 74. If, however, the party claiming damages has rescinded the contract after having taken over the goods, the market price at the time of taking over and not the market price at the time of rescission shall apply.

2) The market price within the meaning of para. 1 shall be the market price prevailing at the place where delivery of the goods should have taken place or, if there is no market price there, the market price prevailing at a reasonable alternative place; differences in the costs of transporting the goods shall be taken into account.

## Art. 77

The party claiming breach of contract shall take all measures reasonable under the circumstances to reduce the loss resulting from the breach, including loss of profit. If it fails to do so, the party in breach of contract may claim a reduction of the damages in the amount by which the loss should have been reduced.

## Section III Interest

## Art. 78

If a party fails to pay the purchase price or any other amount due, the other party shall be entitled to interest on such amounts, without prejudice to any claim for damages under Art. 74.

## Section IV Exemptions

## Art. 79

1) A party shall not be liable for the non-performance of one of its obligations if it proves that the non-performance is due to an impediment beyond its control and that it could not reasonably have been expected to consider the impediment at the time of the conclusion of the contract or to avoid or overcome the impediment or its consequences.

2) If the non-performance of a party is due to the non-performance by a third party of which it makes use for the full or partial performance of the contract, such party shall only be exempt from liability:

- a) if it is exempt under subsection 1, and
- b) if the third party itself would also be exempt under subsection 1, provided that subsection 1 applied to it.

3) The exemption provided for in this Article shall apply for the period during which the impediment exists.

4) The party failing to perform shall notify the other party of the impediment and its effect on its ability to perform. If the other party does not receive the notice within a reasonable time after the non-performing party was aware of the impediment, the non-performing party shall

or should have known, it shall be liable for the damage resulting from this non-receipt.

5) Nothing in this Article shall prevent the parties from exercising any right other than the right to claim damages under this Convention.

#### Art. 80

A party may not invoke the non-performance of obligations by the other party to the extent that such non-performance was caused by its act or omission.

#### Section V Effects of cancellation

#### Art. 81

1) Cancellation of the contract shall release both parties from their contractual obligations, with the exception of any obligations to pay damages. The termination shall not affect any provisions of the contract concerning the settlement of disputes or any other provisions of the contract regulating the rights and obligations of the parties after the termination of the contract.

2) If one party has fulfilled the contract in whole or in part, it may reclaim its performance from the other party. If both parties are obliged to return the performance, the performance shall be returned step by step.

#### Art. 82

1) The Buyer loses the right to declare the cancellation of the contract or to demand replacement from the Seller if it is impossible for him to return the goods in substantially the same condition in which he received them.

2) Paragraph 1 shall not apply:

a) if the inability to return the goods or to return them substantially in the condition in which the Buyer received them is not due to any act or omission of the Buyer;

b) if the goods have been lost or deteriorated in whole or in part as a result of the examination provided for in Art. 38, or

c) if the Buyer sells the goods in whole or in part in the ordinary course of business or consumes them in accordance with their normal use

or changed before he discovered or should have discovered the lack of conformity.

#### Art. 83

The Buyer who has lost the right under Art. 82 to declare rescission of the Contract or to demand replacement from the Seller shall retain all other rights to which he is entitled under the Contract and this Convention.

#### Art. 84

1) If the seller has to repay the purchase price, he shall also pay interest on the amount from the date of payment.

2) The Buyer owes the Seller the equivalent of all benefits derived from the goods or a part thereof:

a) if he has to return the goods in whole or in part, or

b) if it is impossible for him to return the goods in whole or in part, or to return them in whole or in part substantially in the condition in which he received them, but he nevertheless declared the cancellation of the contract or demanded replacement from the seller.

#### Section VI Preservation of the

#### goods Art. 85

If the buyer does not accept the goods in due time or, if payment of the purchase price and delivery of the goods are to be made concurrently, fails to pay the purchase price, and if the seller nevertheless has the goods in his possession or is otherwise in a position to dispose of them, the seller shall take such measures as are reasonable under the circumstances to preserve them. He shall be entitled to retain the goods until the buyer has reimbursed him for his reasonable expenses.

#### Art. 86

1) If the buyer has received the goods and intends to exercise a right of rejection under the contract or this agreement, he shall take such measures as are reasonable in the circumstances.

for their preservation. He shall be entitled to retain the goods until the Seller has reimbursed him for his reasonable expenses.

2) If the goods sent to the buyer have been made available to him at the place of destination and if he exercises the right to reject them, he shall take possession of them for the seller's account, provided that this can be done without payment of the purchase price and without unreasonable inconvenience or disproportionate costs. This paragraph shall not apply if the seller or a person authorized to take custody of the goods for the seller's account is present at the place of destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by para. 1.

Art. 87

A party required to take measures to preserve the goods may store the goods in the storage facilities of a third party at the expense of the other party, provided that this does not result in disproportionate costs.

Art. 88

1) A party obliged to preserve the goods under Art. 85 or 86 may sell them by any appropriate means if the other party unduly delays taking possession or repossessing the goods or paying the purchase price or the preservation costs, provided that it has notified the other party of its intention to sell in due time.

2) If the goods are subject to rapid deterioration or if their preservation would involve disproportionate costs, the party to whom the preservation of the goods is incumbent in accordance with Art. 85 or 86 shall make reasonable efforts to sell them. As far as possible it shall notify the other party of its intention to sell.

3) If one party has sold the goods, it may retain from the proceeds of the sale the amount corresponding to the reasonable costs of maintaining and selling the goods. It owes the surplus to the other party.

Part IV Final

Provisions Art. 89

The Secretary-General of the United Nations is hereby designated depositary of  
this

Convention determined.

#### Art. 90

This Convention shall not prevail over international agreements already concluded or to be concluded in the future which contain provisions on matters governed by this Convention, provided that the parties have their domicile in States party to such an agreement.

#### Art. 91

1) This Convention shall be open for signature at the closing session of the United Nations Conference on Contracts for the International Sale of Goods and shall then be open for signature by all States at United Nations Headquarters in New York until September 30, 1981.

2) This Convention is subject to ratification, acceptance or approval by the signatory States.

3) This Convention shall be open to accession by all States that are not signatories from the date on which it is opened for signature.

4) The instruments of ratification, acceptance, approval and accession shall be deposited with the Secretary-General of the United Nations.

#### Art. 92

1) A Contracting State may, at the time of signature, ratification, acceptance, approval or accession, declare that Part II of this Convention shall not be binding upon it or that Part III of this Convention shall not be binding upon it.

2) A Contracting State which has made a declaration under paragraph 1 of this article in respect of Part II or Part III of this Convention shall not be considered a Contracting State within the meaning of Article 1, paragraph 1, in respect of such matters as are governed by the Part to which the declaration relates.

#### Art. 93

1) A Contracting State which comprises two or more territorial units in which, according to their constitutions, different systems of law are applied in respect of matters governed by this Convention may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify its declaration at any time by a new declaration.

2) The declarations shall be notified to the depositary and shall expressly indicate the territorial units to which the Convention extends.

3) Where, by virtue of a declaration made in accordance with this Article, the Convention extends to one or more, but not all, territorial units of a Contracting State and the place of business of a party is situated in that State, that place of business shall, for the purposes of this Convention, be deemed to be situated in a Contracting State only if it is situated in a territorial unit to which the Convention extends.

4) If a Contracting State does not make a declaration under paragraph 1, this Convention shall extend to all territorial units of that State.

Art. 94

1) Two or more Contracting States which have identical or very similar laws in respect of matters governed by this Convention may at any time declare that the Convention shall not apply to contracts of sale and their conclusion if the parties have their domicile in those States. Such declarations may be made as joint declarations or as related unilateral declarations.

2) If, in respect of matters governed by this Convention, a Contracting State has laws or regulations which are the same as or very close to those of one or more non-Contracting States, it may at any time declare that the Convention shall not apply to contracts of sale or to the conclusion thereof if the parties have their place of business in those States.

3) If a State to which a declaration under paragraph 2 refers becomes a Contracting State, the declaration shall, from the date on which the Convention enters into force for the new Contracting State, have the effect of a declaration made under paragraph 1, provided that the new Contracting State joins in such a declaration or makes a unilateral declaration relating thereto.

Art. 95

Any State may, when depositing its instrument of ratification, acceptance, approval or accession, declare that Article 1, paragraph 1, subparagraph b, is not binding upon it.

Art. 96

A Contracting State under whose laws contracts of sale are to be concluded in writing shall



The parties to the contract may at any time make a declaration in accordance with Article 12 that the provisions of Articles 11 and 29 or of Part II of this Convention which permit the conclusion of a contract of sale, its amendment or cancellation by agreement, or an offer, acceptance or other declaration of intention to be made in a form other than in writing, do not apply if one of the parties has its place of business in that State.

#### Art. 97

- 1) Declarations made under this Convention at the time of signature shall be subject to confirmation at the time of ratification, acceptance or approval.
- 2) Declarations and confirmations of declarations shall be made in writing and shall be notified to the depositary.
- 3) A declaration shall take effect simultaneously with the entry into force of this Convention for the State concerned. However, a declaration notified to the depositary after such entry into force shall take effect on the first day of the month following the expiration of a period of six months after the date of its receipt by the depositary. Unilateral declarations referred to in Article 94 shall take effect on the first day of the month following the expiration of a period of six months after the date of receipt by the depositary of the last declaration.
- 4) A State making a declaration under this Convention may withdraw it at any time by written notification addressed to the depositary. Such withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the depositary.
- 5) The withdrawal of a declaration made under Article 94 shall render ineffective a declaration made by another State under Article 94 and relating thereto from the date on which the withdrawal takes effect.

#### Art. 98

Reservations shall be permitted only to the extent that they are expressly declared permissible in this Convention.

#### Art. 99

- 1) Subject to paragraph 6, this Convention shall enter into force on the first day of the month following the expiration of a period of twelve months after the date of the deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument containing a declaration made in accordance with Article 92,

follows.

2) If a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the excluded part, shall enter into force for that State, subject to paragraph 6 of this article, on the first day of the month following the expiration of a period of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3) A State which ratifies, accepts, approves or accedes to this Convention and which is a Contracting State to the Hague Convention of 1 July 1964 Establishing a Uniform Law on the International Sale of Goods (Hague Sales Convention, 1964) or to the Hague Convention of 1 July 1964 Establishing a Uniform Law on the International Sale of Goods (Hague Sales Convention, 1964) shall at the same time denounce the Hague Sales Convention, 1964 or the Hague Sales Convention, 1964. If the Netherlands is a party to the Hague Convention of 1 July 1964 on the Establishment of a Uniform Law on the International Sale of Goods (Hague Sales Convention 1964), it shall simultaneously denounce the Hague Sales Convention 1964 or the Hague Final Sales Convention 1964 or, as the case may be, both Conventions, by notifying the Government of the Netherlands of the denunciation.

4) A Contracting State to the Hague Sales Convention, 1964, which ratifies, accepts, approves or accedes to the present Convention and which declares or has declared in accordance with Article 92 that Part II of this Convention shall not be binding upon it, shall, at the time of ratification, acceptance, approval or accession, denounce the Hague Sales Convention.

Convention of 1964 by notifying the Government of the Netherlands of the denunciation.

5) A Contracting State to the Hague Final Convention, 1964, which ratifies, accepts, approves or accedes to the present Convention and which declares or has declared, in accordance with Article 92, that Part III of the present Convention shall not be binding upon it, shall, at the time of ratification, acceptance, approval or accession, denounce the Hague Final Convention, 1964, by notifying the Government of the Netherlands of such denunciation.

6) For the purposes of this Article, ratifications, acceptances, approvals and accessions to this Convention made by States Parties to the 1964 Hague Final Convention or to the 1964 Hague Sales Convention shall take effect only after the necessary denunciations by those States have taken effect in respect of the said Conventions themselves. The depositary of this Convention shall communicate with the Government of the Netherlands as depositary of the 1964 Conventions.

connection to ensure the necessary coordination for this purpose.

Art. 100

- 1) This Convention shall apply to the conclusion of a contract only if the offer to conclude the contract is made on or after the date on which the Convention enters into force for the Contracting States referred to in Article 1(1)(a) or the Contracting State referred to in Article 1(1)(b).
- 2) This Convention shall apply only to contracts concluded on or after the date on which the Convention enters into force for the Contracting States referred to in Article 1(1)(a) or the Contracting State referred to in Article 1(1)(b).

Art. 101

- 1) A Contracting State may denounce this Convention or Part II or Part III thereof by written notification addressed to the depositary.
- 2) A denunciation shall take effect on the first day of the month following the expiration of a period of twelve months after the receipt of the notification by the depositary. If in the notification a longer period of notice is given specified, the denunciation shall take effect after the expiry of that longer period following receipt of the notification by the depositary.

Done at Vienna, this 11th day of April 1980, in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

In witness whereof, the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

## **XX. Law against Unfair Competition**

### I. General provisions

#### I. General provisions Art. 1

##### *Purpose*

The purpose of this law is to ensure fair and undistorted competition in the interest of all parties involved.

##### Art. 1a

##### *Terms and designations*

1) For the purposes of this Act means:

a) "Business Conduct" means any conduct, including omissions, that is directly related to the promotion, sale or delivery of goods, works or services;

b) "Provider" means any natural or legal person who offers goods, works or services for sale;

c) "Buyer" or "Customer": the possible buyers of all levels of trade;

d) "Competitor" means any natural or legal person who competes with one or more other companies as a supplier or consumer of goods, works or services;

e) "Consumer" means any natural person acting for purposes that cannot be attributed to his or her commercial, artisanal or professional activity;

f) "Average consumer" means any natural person who is reasonably well informed and reasonably observant and discerning;

g) "materially influencing the consumer's economic behavior" means using a business conduct to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to make a business decision that the consumer would not have made otherwise;

h) "undue influence of a consumer" means the use of a position of power over the consumer to exert pressure

even without the use or threat of physical force

-, which significantly limits the consumer's ability to make an informed decision;

i) "Code of Conduct" means an agreement or set of rules, other than those required by the laws and regulations of a Member State of the European Economic Area (EEA), defining the conduct of companies that undertake to comply with this Code in relation to one or more specific business or economic sectors;

k) "business decision" means any decision by a consumer as to whether, how and under what conditions to make a purchase, make a payment in whole or in part, retain or dispose of goods, works or services, or exercise a contractual right in relation to goods, works or services, whether the consumer decides to take action or to refrain from taking action;

l) "professional diligence" means the standard of skill and care that the trader may reasonably be expected to exercise in accordance with honest market practice in his field of activity;

m) "Sales promotion sweepstakes": a game:

1. which is organized as part of a temporary sales promotion;
2. in which the participant agrees to purchase a good or service at a fair market price;
3. in which neither the organizer nor third parties make a profit from the game itself; and
4. in which the entrant's chances of winning do not depend on the manner in which an entry is submitted or on actual or perceived proof of purchase.

2) In all other respects, the definitions of EEA law, in particular Directive 2005/29/EC, shall apply in addition.

3) The personal terms used in this Act shall be understood to mean members of the female and male genders.

## II. Civil and procedural provisions

### A. Unlawfulness of unfair competition

#### 1. Principle

#### Art. 2

#### *Principle*

1) Is unfair and unlawful:

a) any behavior or business conduct that is deceptive or otherwise contrary to the principle of good faith and that influences the relationship between competitors or between suppliers and customers;

b) any business conduct that is contrary to the requirements of professional diligence and, in relation to the goods, works or services concerned, is likely to have a significant influence on the economic behaviour of the average consumer whom it reaches or to whom it is addressed.

2) If a business practice is directed at a group of consumers, the average consumer is the average member of that group. If it is foreseeable for the supplier that his business conduct will substantially influence the economic behavior of only a clearly identifiable group of consumers who, on the basis of intellectual or industrial property rights, are not the average consumer, the average consumer shall be deemed to be the average member of that group.

physical infirmity, age or credulity are particularly vulnerable, the business conduct is to be assessed from the perspective of an average member of this group.

3) The business practices listed in the Annex to this Act are always unfair if they are directed against consumers.

## 2. Unfair influence on competition Art. 3

### *Unfair advertising and sales methods and other unlawful conduct*

In particular, anyone who

a) disparages others, their goods, works, services, their prices or their business relationships by means of incorrect, misleading or unnecessarily injurious statements;

b) makes incorrect or misleading statements about himself, his company, his business name, his goods, works or services, their prices, the quantity in stock, the type of sales event or about his business relationships or favors third parties in competition in a corresponding manner;

c) uses inaccurate titles or job titles that are likely to create the appearance of special distinction or ability;

d) takes measures that are likely to cause confusion with the goods, works, services or business operations of another;

e) compares himself, his goods, works, services or their prices in an incorrect, misleading, unnecessarily disparaging or suggestive manner with others, their goods, works, services or their prices or in a corresponding manner

Third parties favored in competition;

f) repeatedly offers selected goods, works or services below cost price, emphasizes these offers in advertising and thus deceives the customer about his own or competitors' performance; deception is presumed if the sales price is below the cost price of comparable purchases of similar goods, works or services; if the defendant proves the actual cost price, this shall be decisive for the assessment;

g) deceives the customer about the actual value of the offer by means of additions;

h) impairs the customer's freedom of choice through particularly aggressive advertising or sales methods;

i) conceals the quality, quantity, intended use, benefit or danger of goods, works or services and thereby deceives the customer;

k) fails, when publicly announcing an installment purchase or a legal transaction equivalent thereto, to clearly designate its company, to provide clear information on the cash and total purchase price or to precisely quantify the installment surcharge in francs and annual percentages;

l) fails to clearly identify his or her company or to provide clear information about the net amount of the credit, the total cost of the credit and the APR when making public disclosures about a consumer loan;

m) in the course of a business activity, offers or concludes an installment purchase, a prepayment purchase or a consumer credit agreement and in doing so uses contract forms that contain incomplete or incorrect information about the subject matter of the agreement, the price, the terms of payment, the duration of the agreement, the customer's right of cancellation or termination or about the customer's right to early payment of the remaining debt;

n) advertises in the course of business for entries in directories such as trade, telephone, trademark or similar registers with payment slips, invoices, correction offers or the like, or directly offers these entries in such a way, without making it unambiguously and graphically clear that this is merely an offer to enter into a contract.

### Art. 3a

#### *Unfair sweepstakes for sales promotion*

In particular, anyone who enters a sweepstake in order to promote sales is acting unfairly.

omits to state the following in its advertising:

- a) Identity (name, address, registered office) of the organizer and the client;
- b) Number, type and value of all prizes;
- c) Entry location and deadline;
- d) any geographic or personal limitation such as location or age;
- e) any obligation to provide proof of purchase;
- f) all costs associated with participation;
- g) The date and method of determining the winnings, the announcement of the winners and the distribution of the winnings;
- h) all other conditions of participation.

Art. 4

*Inducement to breach or termination of contract*

In particular, anyone who

- a) The customer is induced to breach the contract in order to be able to conclude a contract with them;
- b) Retrieved
- c) misleads employees, agents or other auxiliary persons into betraying or disclosing the trade or business secrets of their employer or client;
- d) causes a buyer or borrower who has concluded an installment purchase, a prepayment purchase or a consumer credit agreement to revoke the agreement or causes a buyer who has concluded a prepayment purchase to terminate the agreement in order to conclude such an agreement with the buyer.

Art. 5

*Utilization of third party performance*

In particular, anyone who

- a) makes unauthorized use of work results entrusted to him, such as offers, calculations or plans;
- b) uses the work results of a third party, such as offers, calculations or plans, although he must know that they have been made available or accessible to him without authorization;



c) takes over and valorizes the marketable work result of another person without adequate own effort by means of technical reproduction processes.

Art. 6

*Infringement of manufacturing and trade secrets*

In particular, anyone who exploits or discloses to others manufacturing or trade secrets that he has learned or otherwise obtained unlawfully is acting unfairly.

Art. 7

*Non-compliance with working conditions*

In particular, anyone who does not comply with working conditions that are also imposed on the competitor by law or contract, or that are customary in the profession or locality, is acting unfairly.

Art. 8

*Use of abusive terms and conditions*

1) In particular, anyone who uses pre-formulated general terms and conditions of business in a misleading manner to the detriment of one of the contracting parties is acting unfairly:

a) deviate significantly from the directly or mutatis mutandis applicable legal order; or

b) provide for a distribution of rights and obligations that is significantly inconsistent with the nature of the contract.

2) The special provisions of the Consumer Protection Act remain reserved.

Art. 8a

*Use of grossly disadvantageous contractual provisions or exercise of such business practices*

In particular, anyone who, as an entrepreneur, uses grossly disadvantageous contractual provisions within the meaning of Art. 336e of the Commercial Code or engages in grossly disadvantageous business practices in this sense in the course of business without objective justification shall be deemed to have acted unfairly.

3. Misleading and aggressive business conduct towards consumers

Art. 8b

*Misleading*

1) In particular, anyone who:

a) provides false or otherwise deceptive information about:

1. the existence or nature of goods, works or services;
  2. the essential characteristics of goods, works or services, such as availability, benefits, risks, design, composition, accessories, after-sales service and complaint procedures, method and time of manufacture or performance, delivery, fitness for purpose, use, quantity, quality, geographical or commercial origin or the results to be expected from the use, or the results and essential characteristics of tests or examinations to which the goods, works or services have been subjected;
  3. the extent of the company's obligations, the motives for the business conduct, the nature of the distribution process, the statements or symbols of any kind related to direct or indirect sponsorship or relating to an approval of the provider or its goods, works or services;
  4. the price, the method of calculating the price or the existence of a special price advantage;
  5. the need for a service, spare part, replacement or repair;
  6. the person, characteristics or rights of the provider or its representative, such as its identity, assets, qualifications, status, licensing, memberships or relationships, and industrial or commercial property rights or intellectual property rights, or its awards and honors;
  7. the consumer's rights under warranty and guarantee or the risks to which he or she may be exposed;
- b) in the marketing of goods, works or services, including comparative advertising, creates a likelihood of confusion with goods, works, services or the business operations of a competitor;
- c) invokes commitments made under a Code of Conduct and fails to comply with the commitments.

2) In the cases referred to in paragraph 1, it shall be sufficient if the misleading statement is likely to cause an average consumer to take a transactional decision that he would not have taken otherwise.

Art. 8c

*Misleading by omission*

- 1) In particular, anyone who, taking into account the limitations of the communication medium, conceals material information that the average consumer needs in order to make an informed business decision and which is thus likely to cause the average consumer to make a business decision that he or she would not otherwise have made, is acting unfairly.
- 2) Material information within the meaning of paragraph 1 shall in any case include the information requirements set forth in EEA law with respect to commercial communications, including advertising and marketing.
- 3) In assessing misleadingness, it must be taken into account whether the means of communication used in the course of business is subject to spatial or temporal restrictions and whether an omitted statement is otherwise communicated in such a case.
- 4) If consumers are offered goods, works or services for sale, the following information shall be deemed material within the meaning of paragraph 1:
  - a) the essential characteristics of the goods, works or services to the extent appropriate to them and the medium;
  - b) Name and geographic address of the provider and, if applicable, the company for which trading is taking place;
  - c) the price including all taxes and duties or, if this cannot reasonably be calculated in advance, the method of its calculation;
  - d) where applicable, freight, delivery and handling costs or, if these cannot reasonably be calculated in advance, the fact that such additional costs may be incurred;
  - e) the terms and conditions of payment, delivery and performance, as well as the procedure for dealing with complaints if they deviate from the requirements of professional diligence;
  - f) the existence of a right of withdrawal, if applicable.

Art. 8d

*Aggressive business conduct*

- 1) In particular, it is unfair to restrict the consumer's freedom of choice or conduct in the marketing of goods, works or services by

harassment, coercion, use of physical force, or other undue influence, if it is likely to cause the average consumer to make a transactional decision that he or she would not otherwise have made.

2) In determining whether an aggressive business method is present, the onerous or disproportionate obstacles of a non-contractual nature with which the supplier attempts to prevent the consumer from exercising his contractual rights, in particular the right to terminate the contract or to switch to other goods, works or services or to another supplier, must also be taken into account.

### B. Right of action

#### Art. 9

##### *Principle*

1) A person who is threatened or injured by unfair competition in his clientele, credit or professional reputation, in his business operations or otherwise in his economic interests may apply to the court,

- a) prohibit a threatened violation;
- b) to eliminate an existing violation;
- c) Determine the unlawfulness of a violation if it continues to have a disruptive effect.

2) In particular, he may request that a correction or the judgment be communicated to third parties or published.

3) He may also sue for damages and satisfaction as well as for the return of a profit in accordance with the provisions of the General Civil Code.

4) The risk of using grossly disadvantageous contractual provisions or engaging in such business practices (Art. 8a) no longer exists if the entrepreneur, after being warned by an association authorized to bring an action under Art. 10(2)(a), issues a cease-and-desist declaration secured by an appropriate contractual penalty (Art. 1336 ABGB) within a reasonable period of time.

5) Retrieved

6) Retrieved

#### Art. 10

##### *Complaints from customers and organizations*

- 1) The actions pursuant to Art. 9 are also available to customers whose economic interests are threatened or injured by unfair competition.
- 2) Furthermore, according to Art. 9 par. 1 and 2 can sue:
  - a) Professional and trade associations authorized by the Articles of Association to safeguard the economic interests of their members;
  - b) Organizations dedicated to consumer protection nationwide and in accordance with their statutes;
  - c) the representatives of public law.
- 3) If the origin of the infringement in the cases of misleading advertising pursuant to Art. 3 is in Liechtenstein, the claim for injunctive relief may also be brought by any body of another Member State of the European Economic Area qualified in accordance with Art. 3 of Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests (EEA Law Series: Annex XIX 7d.01), provided that the interests protected by that body are affected in those Member States.

Art. 11

*Actions against the principal*

If the unfair competition has been committed by employees or other auxiliary persons during official or business activities, an action may also be brought against the principal pursuant to Art. 9 par. 1 and 2.

UWG

C. Procedural provisions

Art. 12

*Precautionary measures*

- 1) At the request of a party entitled to bring an action, the court shall order precautionary measures, in particular for the preservation of evidence, the maintenance of the existing situation and the provisional enforcement of disputed claims under Art. 9 par. 1.
- 2) The applicant must show credibly that the other party is using means in economic competition that violate the provisions of this Act and that, as a result, it is threatened with a disadvantage that cannot be easily replaced and that can only be averted by a precautionary measure.
- 3) Before a precautionary measure is ordered, the other party must be heard. If there is imminent danger, an interim injunction may be issued beforehand.

be

Art. 13

*Security deposit*

- 1) The applicant may be required to provide security.
- 2) If the other party provides adequate security in favor of the applicant, a precautionary measure may be waived or an ordered measure may be revoked in whole or in part.

Art. 14

*Reversal of burden of proof*

- 1) The court may require the company to prove the accuracy of factual allegations in connection with a business practice if this appears appropriate in the individual case, taking into account the legitimate interests of the company and other persons involved in the proceedings.
- 2) The court may consider factual allegations to be incorrect if the evidence is not adduced or is deemed insufficient.

Art. 15

*Deadline for the main action*

- 1) If the court orders a precautionary measure, it shall set a time limit of up to 30 days for the applicant to raise the claim. In the event of default, the measure shall lapse, which must be pointed out in the order.
- 2) If the action is not raised in time, if it is withdrawn or dismissed, the court may order the claimant to compensate the damage caused by the precautionary measure. The action is subject to a limitation period of one year.

Art. 16

*Protection of manufacturing and trade secrets*

- 1) In disputes pursuant to Art. 3 f), the manufacturing and business secrets of the parties shall be protected.
- 2) Evidence by which such secrets may be disclosed may only be made available to the other party to the extent that this is compatible with the preservation of the secrets.

III. Administrative provisions

A. Price Disclosure to Consumers Art.

*Obligation to announce the price*

- 1) For goods offered for sale to consumers, the actual price to be paid must be disclosed, unless the government provides for exceptions. Exceptions are permitted in particular for technical or safety reasons. The same obligation exists for services designated by the government.
- 2) The government regulates the announcement of prices and tips by ordinance.
- 3) The provisions on measurement apply to measurable goods and services.

Art. 18

*Price announcement in advertising*

If prices or price reductions are displayed in advertising, their announcement shall be governed by regulations to be issued by the Government.

Art. 19

*Misleading price announcement*

It is inadmissible to misleadingly

- a) Prices to be announced,
- b) to point out price reductions or
- c) list other prices in addition to the actual price to be paid.

Art. 20

*Duty to provide information*

- 1) The government may obtain information and request documents to the extent necessary to clarify the facts of the case.
- 2) The obligation to provide information applies to:
  - a) Persons and companies offering goods for sale to consumers or manufacturing, purchasing or trading in such goods;
  - b) Persons and companies that offer, provide, arrange or use services;
  - c) Business organizations;
  - d) Organizations dedicated to consumer protection nationwide and in accordance with their statutes.

3) The duty to provide information does not apply if the testimony can be refused in accordance with the provisions of the Code of Civil Procedure.

B. Sales and similar events Art. 21

*Authorization requirement*

Retrieved

IV. Penal provisions

Art. 22

*Unfair competition*

1) Any person who intentionally commits unfair competition pursuant to Art. 2 para. 3, Art. 3, 3a, 4, 5, 6, 8b, 8c or 8d shall, upon application, be punished by the District Court for a misdemeanor with a fine of up to 100,000 francs, or in the event of non-collection, with imprisonment for a term of up to three months. Anyone who is entitled to file a civil action in accordance with Articles 9 and 10 may file a criminal complaint.

2) In the case of negligent commission, the upper limit of the penalty specified in paragraph 1 shall be reduced to half.

Art. 23

*Violation of the obligation to disclose prices to consumers*

1) Who intentionally

- a) violated the obligation to disclose prices (Art. 17);
- b) violates the provisions on the announcement of prices in advertising (Art. 18);
- c) advertises prices in a misleading manner (Art. 19);
- d) violated the obligation to provide information in connection with the disclosure of prices (Art. 20);
- e) violates the provisions of the Government on the announcement of prices (Art. 17),

shall be liable to a fine of up to 20,000 Swiss francs, and in case of non-collection, to imprisonment for a term of up to two months.

2) In the case of negligent commission, the upper limit of the penalty specified in paragraph 1 shall be reduced to half.

Art. 24

*Violation of the sell-out rules*



Repealed

Art. 25

*Violations in business operations*

If offences are committed in the business operations of a legal entity or a general or limited partnership or a sole proprietorship, the penal provisions shall apply to the persons who acted or should have acted on their behalf, but with joint and several liability of the legal entity, partnership or sole proprietorship for the fines and costs.

V. Final provisions Art. 26

*Executive Orders*

The Government shall issue the regulations necessary for the implementation of this Act.

Art. 27

*Repeal of previous law*

It is repealed:

- a) Law of November 22, 1946 on Unfair Competition, LGBl. 1946 No. 26;
- b) Art. 23 of the Act of November 18, 1964, on the contract of instalment and prepayment, LGBl. 1965 No. 6.

Art. 28

*Entry into force*

This Act shall enter into force on November 1, 1994.

Appendix

Commercial practices that are considered unfair in all circumstances (Art. 2 para. 3)

1. A provider's false claim to be one of the signatories of a code of conduct.
2. The use of quality marks, quality labels or similar without the required authorization.
3. The inaccurate claim that a code of conduct is required by a public or

other place approved.

4. Claiming that a supplier, its business conduct, goods, works or services have been confirmed, endorsed or approved by a public or private body when this is not the case, or making such a claim without complying with the conditions for confirmation, endorsement or approval.

5. The offer of goods, works or services at a certain price if the offeror does not disclose that he has reasonable grounds for believing that he will not be able to provide or cause to be provided such goods, works or services or equivalent goods, works or services at the stated price for a reasonable period of time and in an appropriate quantity (bait and switch offers).

6. The offering of goods, works or services at a specified price and then

- a) Refusal to show the advertised item to the advertised person, or
- b) Refusal to accept orders therefor or to deliver within a reasonable time; or
- c) Demonstrating a defective copy with the intention of selling another product instead ("bait-and-switch" technique).

7. The false claim that goods, works or services will be available only for a very limited time or only for a very limited time under certain conditions, so as to induce the consumer to a

immediate decision, so that he has neither time nor opportunity to make an informed decision.

8. The provision of the service, in a language other than that in which the contract negotiations were conducted, if the language originally used is not an official language of the EEA member state in which the provider is established; this does not apply if the provider has explained that the service to be provided is not provided in the language originally used.

9. Falsely claiming or otherwise creating the false impression that a product can be lawfully sold.

10. Rights granted to consumers by law are presented as a special feature of the provider's offer.

11. Editorial content financed by the provider in the media for the purpose of promoting sales, without this connection being apparent from the content or from any other factors relevant to the

consumers clearly recognizable images and sounds would clearly emerge (advertising disguised as information).

12. Making an incorrect claim about the nature and extent of the risk to the personal safety of the consumer or his family in the event that he does not purchase the goods, works or services.

13. The advertising of goods, works or services that are similar to the goods, works or services of a particular supplier, if this is done with the intention of deceiving the consumer about the commercial origin of the advertised goods, works or services.

14. The introduction, operation, or promotion of a pyramid scheme for sales promotion in which the consumer has in mind the possibility of obtaining a reward to be obtained primarily through the introduction of new consumers into such a scheme rather than through the sale or consumption of products.

15. Falsely claiming that the provider will soon go out of business or relocate its business premises.

16. The false claim that goods, works or services could increase the chances of winning at games of chance.

17. The false claim that goods, works or services can cure diseases, dysfunctions or deformities.

18. Incorrect information about market conditions or sources of supply to induce the consumer to purchase goods, works or services at less favorable than normal market conditions.

19. Offering contests and competitions without awarding the described prizes or an appropriate equivalent.

20. The paraphrasing of goods, works or services as "free", "free of charge", "free of charge" or similar, although the consumer has to bear costs further than the costs that are unavoidable in the course of accepting the offer and for the collection or delivery of the goods.

21. The transmission of advertising material accompanied by an invoice or similar document with a request for payment, if this gives the consumer the false impression that he/she has already ordered the advertised product.

22. The incorrect assertion or the creation of the incorrect impression of the

Provider, he is not acting for the purposes of his business, trade, craft or profession, or he is a consumer.

23. Creating the false impression that after-sales service is available for goods, works or services in an EEA member state other than the one in which the goods, works or services are sold.

24. Creating the impression that the consumer cannot leave the premises without concluding a contract.

25. Failure to comply with the consumer's request to leave or not to return to the consumer's home during personal visits, unless the visit is legally justified in order to enforce a contractual obligation.

26. The solicitation of customers by persistent and unsolicited approaches by telephone, fax, e-mail or other media suitable for distance selling, unless such conduct is legally justified for the enforcement of a contractual obligation. This shall apply without prejudice to Art. 10 of Directive 97/7/EC, Directives 95/46/EC and 2002/58/EC and Art. 6 of the Act on the Protection of Personal Secrets under Criminal Law.

27. Requesting, when making a claim under an insurance policy, the submission of documents that could reasonably be considered irrelevant to the validity of the claim, or systematically failing to respond to relevant correspondence, so as to discourage the consumer from exercising his or her contractual rights.

28. The direct invitation to children included in an advertisement to buy the advertised goods, works or services themselves or to persuade their parents or other adults to buy them for them.

29. The request to the consumer for immediate or later payment or for the return or safekeeping of goods, works or services which the supplier has delivered without the consumer's instigation (unsolicited goods and services). Excluded from this are replacement deliveries according to Art. 7 para. 3 of Directive 97/7/EC.

30. The express notice to the consumer that the supplier's job or livelihood is at risk if the consumer does not purchase his goods, works or services.

31. Creating the false impression that the consumer has already won a prize, will win a prize, or will be disadvantaged by a particular

act to win a prize or other advantage, even though

a) there is in fact no prize or other benefit, or

b) the consumer's ability to obtain the prize or other benefit is made dependent on the payment of a sum of money or the assumption of costs exceeding the postal or telephone charges at the standard rate.

## **XXI. Civil Law Mediation Act**

from December 15, 2004

### **I. General provisions Art. 1**

#### *Subject and scope*

1) This law regulates:

- a) the organization of mediation in civil cases;
- b) the requirements and procedure for registration in and removal from the list of mediators;
- c) the rights and obligations of registered mediators; and
- d) the suspension of time limits through mediation in civil cases.

2) This Act does not apply to the activities of mediators who are neither registered in the list of mediators (Art. 4) nor provide services across borders (Art. 19).

### **Art. 2**

#### *Terms and designations*

1) For the purposes of this Act means:

- a) "Mediation": an activity based on the voluntariness of the parties, in which a professionally trained, neutral or impartial mediator (mediator) uses recognized methods to systematically promote communication between the parties with the aim of facilitating a resolution of their conflict for which the parties themselves are responsible;
- b) "Mediation in civil cases" means mediation for the resolution of conflicts which the ordinary civil courts have jurisdiction to resolve per se.

2) The designations of profession, function and person used in this Act shall be understood to mean members of the female and male sexes.

### **II. Organization and implementation**

#### *Governme*

#### *nt Art. 3*

#### *Tasks*

- 1) The Government shall be responsible for the execution of this Act.
- 2) The Government shall in particular:
  - a) the decision on registration in or removal from the list of mediators;
  - b) keeping the list of mediators.

III. List of mediators Art.

4

*List content*

- 1) In the list of mediators to be maintained by the Government shall be entered:
  - a) First names and surnames;
  - b) Date of birth;
  - c) Nationality;
  - d) the designation of the mediator's other profession;
  - e) the work address; and
  - f) the professional field(s) of activity, if specified by the mediator.
- 2) The list of mediators shall be published. It may also be made available by means of a call-off procedure.
- 3) Retrieved

Art. 5

*Requirements for registration*

- Entitlement to registration in the list of mediators is granted to those who prove that they:
- a) has reached the age of 28;
  - b) is professionally qualified;
  - c) is trustworthy;
  - d) has taken out liability insurance in accordance with Art. 15;
  - e) has suitable premises in the country for practicing as a mediator; and
  - f) holds Liechtenstein citizenship or citizenship of a State party to the Agreement on the European Economic Area (EEA), or is treated as such on the basis of an international treaty; or

g) is domiciled in Germany.

#### Art. 6

##### *Professional qualification*

1) A person is professionally qualified if, on the basis of appropriate training, he or she has knowledge and skills in mediation and is familiar with the legal and psychosocial principles of mediation.

2) When assessing professional qualifications, the knowledge and skills that members of certain professions, in particular psychologists, possess are to be taken into account.

therapists, psychologists, lawyers, judges, public prosecutors, social workers or university lecturers from a relevant subject, acquired in the course of their training and professional practice and which are of benefit to them in the practice of mediation, shall be taken into account.

3) The Government shall regulate the details of the training of mediators by ordinance.

#### Art. 7

##### *Application for registration*

1) The procedure for registration in the List of Mediators shall be initiated on the basis of a written application submitted by the applicant to the Government. The application shall contain the information specified in Article 4, paragraph 1.

2) The requirements according to Art. 5 and 6 must be proven by appropriate documents, in particular certificates, confirmations or professional diplomas. The trustworthiness, if it is not a legal requirement of the other professional activity of the applicant, is to be proven by a certificate of criminal records, which is not older than three months and in which no conviction appears, which makes a reliable activity as a mediator appear doubtful.

3) The application must be accompanied by a description of the previous professional activity and the training path as a mediator, including a list of the institutions where the training was completed.

4) All documents must be submitted in German or in an agreed translation.

#### Art. 8

##### *Checking the requirements*

1) On the basis of the application and its enclosures, the government shall examine whether, in the case of



the applicant meets the requirements of Article 5 and whether the application is accompanied by the documents and evidence required to verify the requirements of Article 6. If necessary, it shall request the applicant to supplement the application within a reasonable period of time. Unjustified failure to comply with this request shall be deemed withdrawal of the application.

2) The government may summon the applicant to a hearing. Unjustified failure to comply with the summons shall be deemed withdrawal of the application.

Art. 9

*Registration; renewal*

1) Those who meet the requirements for registration on the list shall be registered by the Government for a period of five years, indicating the date of the end of the period.

2) The mediator may request in writing that his registration be maintained for a further ten years no earlier than one year and no later than three months before the expiry of the registration period. The mediator shall remain on the list until a decision is made on the application submitted in due time. Renewed applications to maintain the registration for a further ten years in each case are admissible.

3) In the application for maintenance of registration, the mediator shall describe his further training (Art. 16). The registration shall be maintained if the professional qualification is further ensured by attending further training courses and none of the other requirements according to Art. 10 are fulfilled.

Art. 10

*Removal from the list*

1) The Government shall decide to remove the mediator from the list if it becomes aware that one of the conditions set forth in Art. 5 has ceased to exist or has not existed, that the mediator has failed to comply with his duty under Art. 16, or that he has otherwise grossly or repeatedly violated his duties despite a warning.

2) In addition, the mediator shall be removed from the list in the event of his/her renunciation, death or expiry of the time limit (Art. 9).

3) In the event of deletion, the previous entry shall be retained in the list for a period of five years, recognizable as a deleted entry.

IV. Rights and Duties of the Registered Mediator Art.

*General rights and obligations*

- 1) Who is registered in the list of mediators is:
  - a) entitled to use the designation "registered mediator";
  - b) when practicing mediation is obliged to use this designation.
- 2) The mediator may not give, take, promise or be promised any remuneration for the mediation or recommendation of persons for mediation. Legal transactions that violate this prohibition are void. Benefits from such transactions may be reclaimed.

Art. 12

*Incompatibility; duties to provide information*

- 1) Anyone who is or has been a party, party representative, advisor or decision-making body in a conflict between the parties may not act as a mediator in that conflict. Similarly, a mediator may not represent, advise or decide in a conflict to which the mediation relates or has related. However, after the mediation has ended, he or she may act within the scope of his or her other professional powers and with the consent of all parties concerned to implement the result of the mediation.
- 2) The mediator may only act with the consent of the parties. He/she shall inform the parties about the nature and legal consequences of mediation in civil cases and shall conduct it to the best of his/her knowledge and belief, personally, directly and neutrally towards the parties.
- 3) The mediator shall draw the parties' attention to any need for advice, in particular legal advice, arising in connection with the mediation and to the form in which they must put the result of the mediation in order to ensure its implementation.

Art. 13

*Documentation and retention obligation; confirmation*

- 1) The mediator shall document the beginning of the mediation, the circumstances from which it can be seen whether the mediation was continued properly, as well as the end of the mediation. The beginning of the mediation is considered to be the time when the parties have commissioned the mediator to act as mediator in their conflict. The mediation ends when a result has been achieved or one of the parties or the mediator declares that they no longer wish to continue the mediation.
- 2) At the request of the parties, the mediator shall disclose the result of the mediation as well as

record in writing the steps required to implement it.

3) The mediator shall keep his records for at least five years after the mediation has ended. At the request of the parties, the mediator shall provide them with a copy of the records referred to in paras. 1 and 2 above.

4) The mediator shall also, upon request of a party, issue a confirmation of the performance of the mediation and deliver it to the party for submission to the Regional Court in the event of filing a lawsuit. The confirmation shall contain:

- a) the name of the parties;
- b) the designation of the subject of mediation;
- c) the time of the beginning and the end of the mediation;
- d) the signature of the mediator.

Art. 14

*Secrecy; Confidentiality*

The mediator is obligated to maintain secrecy about the facts which have been entrusted to him or otherwise become known to him in the course of the mediation. He/she shall treat as confidential the documents prepared or handed over to him/her in the course of the mediation. The same applies to auxiliary persons of the mediator as well as to persons who work under the guidance of a mediator within the scope of a practical training.

Art. 15

*Liability insurance*

1) The mediator shall take out liability insurance with an insurer authorized to do business in Germany to cover claims for damages arising from his/her activities and shall maintain such insurance for the duration of his/her registration in the list of mediators.

2) The following applies to the insurance contract:

- a) Liechtenstein law must be applicable to it;
- b) the minimum sum insured shall be 1,000,000 Swiss francs for each insured event;
- c) the exclusion or limitation in time of the insurer's subsequent liability is inadmissible.

3) Insurers are required to provide to the government, without request and promptly

report any circumstance which means or may mean a termination or limitation of coverage or a deviation from the original certificate of insurance and provide information on such circumstances to the Government upon request. The Mediator shall furnish the Government with evidence of the existence of the liability insurance at any time upon request.

Art. 16

*Advanced training*

The mediator shall undergo appropriate continuing education, at least to the extent of fifty hours over a five-year period, and shall provide evidence of such education to the Government every five years.

Art. 17

*Obligation to notify*

The mediator shall immediately notify the Government of any change in circumstances affecting his or her registration in the List of Mediators. The registration shall be amended accordingly.

V. Suspension of time

limits Art. 18

*Principle*

- 1) The commencement and proper continuation of mediation under this Act shall suspend the commencement and continuation of the statute of limitations and other time limits for the enforcement of the rights and claims affected by mediation.
- 2) The parties may agree in writing that the suspension shall also include other claims existing between them which are not affected by the mediation. If the mediation relates to rights and obligations under family law, the suspension shall include, even without a written agreement, all rights and claims under family law which are mutual or to be exercised by the parties against each other, unless the parties agree otherwise in writing.
- 3) The time limits under subsections (1) and (2) shall remain suspended if one of the parties files an action with the Regional Court within 14 days of the end of the mediation.

VI. Exercise of the freedom to provide services

Art. 19

*Approval*

- 1) Nationals of an EWRA Contracting State who are resident in the territory of another

mediation in civil law matters on the basis of an official authorization are permitted to provide cross-border services in Austria.

2) Persons who are treated as nationals of an EEAA member state on the basis of an international treaty are also permitted to provide cross-border services.

Art. 20

*Requirements*

1) The cross-border mediator is neither entitled nor obliged to be registered in the list of mediators in the country.

2) A mediator who intends to work cross-border within the country must notify the government of this intention before commencing work. The notification must be accompanied by

a) the information according to Art. 4 par. 1;

b) proof of fulfillment of the requirements according to Art. 5 letters a, c, d and f;

c) proof of the existence of suitable premises for the exercise of the activity as a mediator;

d) a certificate stating that he/she is authorized to practice as a mediator in civil matters on the basis of an official authorization in the state in which he/she is established (state of origin).

3) The cross-border mediator shall cease his activity without delay if one of the conditions set out in paragraph 2(b) or (c) ceases to apply or if the authorization to act as a mediator in civil matters has expired or been withdrawn in the State of origin.

Art. 21

*Rights and duties*

1) Cross-border mediators shall have the rights and obligations set forth in Articles 11(2) and 12 to 15.

2) Mediators operating across borders shall notify the Government without delay of the cessation of a requirement under Art. 20, para. 2, and of the expiry or withdrawal of the authorization to act as a mediator in civil matters in the State of origin.

3) The Government shall promptly notify the State of origin of any violations of provisions of this Act by the cross-border mediator.

4) A cross-border mediator practicing the activity of a mediator in civil cases in the country of origin shall have the professional title which he/she is entitled to use in the country of origin according to the law in force in that country.

is to be used in the language or one of the languages of the State of origin as well as to indicate the State of origin.

5) The Government may publish an overview of the mediators operating across borders, indicating the data pursuant to Art. 4 par. 1. It may also be made accessible by means of a retrieval procedure.

Vla. Data  
protection

Art. 21a

*Processing of personal data*

1) The Government may process personal data, including personal data on criminal convictions and offences, of applicants in connection with registration on the list of mediators as well as of cross-border mediators to the extent necessary for the performance of its duties under this Act.

2) The Government may, for the purpose of fulfilling its duties under this Act, in particular Article 4(1) and Article 21(5), publish data under subsection (1) or make them available by means of a retrieval procedure.

VII. Appeals; fees Art. 22

*Appeals*

Appeals against decisions of the Government may be lodged with the Administrative Court within 14 days of service.

Art. 23

*Fees*

Fees shall be charged for official acts of the Government, in particular for applications in connection with registration in the List of Mediators. The Government shall regulate the details of the charging of fees by ordinance.

VIII. Penal provisions

Art. 24

*Misdemeanor*

- 1) A mediator registered in the list who, contrary to his duty of secrecy and confidentiality (Art. 14), discloses or exploits facts and thereby violates a legitimate interest of a person, shall be punished by the Regional Court for misdemeanor by imprisonment for up to six months or a fine of up to 360 daily rates.
- 2) The perpetrator shall not be punished if the disclosure or exploitation is justified in terms of content and form by a public interest or a legitimate private interest.
- 3) The perpetrator shall be prosecuted only at the request of the last person who has an interest in secrecy.

Art. 25

*Transgressions*

Unless the act constitutes a criminal offense within the jurisdiction of the district court, the government shall punish with a fine of up to 5,000 francs for a misdemeanor who:

- a) unauthorizedly designates himself or herself as a registered mediator or uses a similar changeable designation;
- b) as a Mediator entered on the List, violates the provisions of Articles 11, paragraph 2, 12, 13, 15 and 17; or
- c) as a cross-border service provider, fails to comply with its obligation to report under Article 20(2).

IX. Final provisions Art. 26

*Executive Orders*

The Government shall issue the regulations necessary for the implementation of this Act.

Art. 27

*Entry into force*

This Act shall enter into force on May 1, 2005.

## **XXII. Due Diligence Act (DDA)**

from December 11, 2008

### **I. General provisions Art. 1**

#### *Subject and purpose*

1) This Act regulates the provision of due diligence in the professional practice of the activities subject to this Act.

2) Its purpose is to combat money laundering, organized crime and terrorist financing as defined in the Criminal Code (Sections 165, 278 to 278d StGB).

3) It also serves to transpose or implement the following EEA legislation:

a) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system

for the purpose of money laundering and terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73);

b) Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EU) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

4) The applicable version of the EEA legal provisions referred to in para. 3 results from the promulgation of the decisions of the EEA Joint Committee in the Liechtenstein Law Gazette pursuant to Art. 3 let. k of the Promulgation Act.

### **Art. 2**

#### *Terms and designations*

1) For the purposes of this Act shall be deemed to include:

a) Retrieved

b) "Non-profit, tax-exempt entities" means entities with exclusively non-profit or charitable purposes, the fulfillment of which promotes the general public and which can be shown to be exempt from taxation in their country of residence.



are exempt from income tax. A promotion of the general public exists in particular if the activity benefits the public welfare in a charitable, religious, humanitarian, scientific, cultural, moral, social, sporting or ecological field, even if only a certain group of persons is promoted by the activity;

c) "Business relationship" means any business, professional or commercial relationship maintained in connection with the professional activities of the person subject to due diligence and which, when the contact is established, is expected to last for a certain period of time;

d) "Occasional transactions" means transactions and dealings, including, but not limited to, money exchanges, cash subscriptions for cash and bond issues, cash purchases or sales of bearer securities, and cashing of checks, unless the transaction or dealings are conducted through an existing account or de- pot in the customer's name;

e) "beneficial owner" means a natural person on whose initiative or in whose interest a transaction or activity is ultimately carried out or a business relationship is ultimately established. In the case of legal entities, it is also the natural person who ultimately owns or controls the legal entity. The government shall regulate the details by ordinance;

f) "Entity" means a legal person, partnership, trust or other community or property entity, regardless of its legal form;

g) "Domiciliary bank" means a bank, a financial institution within the meaning of Article 3(2) of Directive (EU) 2015/849 or an institution carrying out activities equivalent to those of a bank or a financial institution, which is incorporated in a state where it does not have a physical presence such that genuine management and administration could take place, and which is not affiliated with a regulated financial group;

h) "Politically exposed persons": natural persons who hold important public offices or have held such offices up to one year ago, and their immediate family members or persons known to be close to them. The government shall regulate the details by ordinance;

i) "Third Country" means a country that is not a member of the European Economic Area (EEA);

k) "national risk analysis" means the periodic identification and assessment of existing risks of money laundering and terrorist financing, as well as any related data protection issues, with the aim of promoting the understanding and mitigation of existing risks;

l) "Exchange office" means natural or legal persons whose activity consists in the exchange of legal tender at the official exchange rates;

l) "VT exchange service provider" means a natural or legal person whose activity consists in exchanging virtual currencies or tokens for legal tender or other virtual currencies or tokens.

token and vice versa;

l) "Token" means a token within the meaning of Art. 2 par. 1 let. c TVTG;

m) "Correspondent Banking Relationship:

1. The provision of banking services by one bank as a correspondent bank to another bank as a respondent bank, including, but not limited to, the maintenance of a current account or other reference account and the provision of related services such as cash management, international money transfers, check clearing, flow-through account services, and foreign exchange transactions;

2. relationships between banks and financial institutions within the meaning of Art. 3 No. 2 of Directive (EU) 2015/849, both with and among themselves, where similar services are provided by a correspondent institution for a respondent institution; this includes, inter alia, relationships established for securities transactions or transfers of funds;

n) "discretionary entity" means an entity with one or more discretionary beneficiaries;

o) "Discretionary beneficiaries": Persons who belong to the group of beneficiaries designated by the founder, incorporator or trustor and whose possible beneficiary status is left to the discretion of the foundation council, board of directors or trustor or another body appointed for this purpose. This also includes persons whose beneficiary status is solely at the discretion of the foundation board, board of directors or trustee or another body appointed for this purpose, either in terms of the amount or the timing;

p) "Distributee" means a discretionary beneficiary who receives a benefit from the assets or earnings of a discretionary legal entity. This pecuniary benefit may consist of bankable and non-bankable assets;

q) "transaction-related records" means all records that permit reconstruction of individual transactions, including the amount and currency;

r) "Members of the management level" means natural persons who are members of the Ge-

The Supervisory Board is composed of the members of the Executive Board, the Board of Directors, the Supervisory Board, the Board of Management or persons in a comparable function;

s) "Group" means a group of companies consisting of a parent company, its subsidiaries and the companies in which the parent company or its subsidiaries hold an interest, as well as companies linked to each other by a relationship within the meaning of Art. 1097 of the Persons and Companies Law;

t) Retrieved

u) "States with strategic deficiencies": states whose national systems for combating money laundering and terrorist financing have strategic deficiencies according to the delegated acts of the Commission pursuant to Art. 9(2) of Directive (EU) 2015/849 or according to the assessments of international bodies for combating money laundering and terrorist financing that pose significant risks to the financial system;

v) "Supervisory Authority": the Financial Market Authority (FMA) or the Liechtenstein Bar Association;

w) "Members of tax advisory professions" means natural or legal persons holding one of the following licenses:

1. Permit for comprehensive activity within the meaning of Art. 3 para. 1 let. b of the Fiduciary Act; or

2. Authorization under the Auditors Act;

x) "external accountants" means natural or legal persons who provide services for third parties within the meaning of Article 3(1)(n) and who have one of the following authorizations:

1. Authorization for comprehensive activity within the meaning of Art. 3 (1) (b) of the Fiduciary Act;

2. Authorization under the Auditors Act; or

3. Permit under the Trade Act to perform the activities of an accountant;

y) "EEA State of Origin" means an EEA Member State in which the registered office or head office of the Custodian is located;

z) "European Supervisory Authorities" means the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA);

(z) 'virtual currency' means a digital representation of value that is not issued or guaranteed by any central bank or public body and is not necessarily linked to a legally established currency and does not have the legal status of currency or money, but is accepted by natural or legal persons as a medium of exchange and can be transmitted, stored and traded electronically;

z) "Operators of trading platforms for virtual currencies or tokens": natural or legal persons who operate trading platforms through which their customers settle or have settled an exchange of virtual currencies or tokens for legal tender or other virtual currencies or tokens and vice versa, whose activity goes beyond mere intermediation without involvement in the payment flows, but who do not hold tokens or VT keys in custody for their customers.

2) The designations of persons, functions and professions used in this Act shall be understood as referring to persons of both male and female genders.

### Art. 3

#### *Scope*

1) This law applies to persons subject to due diligence. These are:

- a) Banks and investment firms with a license under the Banking Act;
- b) Electronic money institutions with an authorization under the Electronic Money Act;
- c) Undertakings for collective investment that distribute their unit certificates or shares; due diligence must be carried out:
  1. by the self-managed collective investment undertaking;
  2. in the case of externally managed undertakings for collective investment by:
    - aa) the management company pursuant to UCITSG or IUG;
    - bb) the manager of alternative investment funds pursuant to the AIFMG;
    - cc) the manager of European Venture Capital Funds in accordance with Regulation (EU) No 345/2013; or
    - dd) the administrator of European Social Entrepreneurship Funds in accordance with Regulation (EU) No 346/2013;
- d) Insurance companies with a license under the Insurance Supervision Act, insofar as they conduct direct life insurance;
- e) Liechtensteinische Post Aktiengesellschaft, insofar as it carries out activities outside its universal service that are subject to a reporting obligation to the FMA;

f) Exchange offices;

g) Insurance brokers with a license under the Insurance Distribution Act, insofar as they broker life insurance contracts and other services with an investment purpose;

h) Payment institutions and payment initiation service providers with an authorization under the Payment Services Act;

i) Asset management companies with a license pursuant to the Asset Management Act, management companies with a license for activities pursuant to Art. 14(2)(a) and (b) UCITSG and alternative investment fund managers with a license for activities pursuant to Art. 29(3)(a) and (b) AIFMG;

k) Service provider for legal entities that professionally provide one of the following services on behalf of a third party:

1. Establishment of companies, legal entities or trusts;

2. Exercising the management or executive function of a company, the function of a partner in a partnership or a comparable function in another legal entity or appointing another person for the aforementioned functions;

3. Providing a registered office, business, postal or administrative address and other related services to an entity;

4. To act as a member of the board of trustees of a foundation, trustee of a trust or similar legal entity, or to appoint another person to perform the aforementioned functions;

5. Acting as a nominal shareholder for another person that is not a company listed on a regulated market that is subject to disclosure requirements under EEA law or equivalent international standards, or appointing another person to perform the aforementioned functions;

l) Casinos and online gaming providers with a license under the Money Gaming Act;

m) Attorneys-at-law and law companies licensed under the Attorneys-at-law Act, as well as legal agents within the meaning of Art. 108 of the Attorneys-at-law Act, insofar as they provide tax advice to their clients or participate in the planning and implementation of

Participate in financial or real estate transactions involving the following:

1. the purchase and sale of companies or real estate;
2. The management of money, securities or other assets of the client;
3. The opening or management of accounts, deposits or safe deposit boxes; or
4. raising the funds necessary for the establishment, operation or administration of legal entities;
5. Retrieved

n) Members of the tax advisory professions and external accountants to the extent that they participate in the planning and execution of financial or real estate transactions for their clients involving the following:

1. the activities referred to in subparagraphs (m)(1) to (4); or
2. the administration of trusts, companies, foundations or similar legal entities;

o) Retrieved

p) Real estate agents, insofar as the activity involves the acquisition or sale of ownership of land and real estate or the renting thereof, provided that the monthly rent amounts to 10,000 francs or more;

q) Persons trading in goods, provided that payment is made in cash or by means of a virtual currency or token and the amount is 10,000 Swiss francs or more, regardless of whether the transaction is made in a single operation or in several operations between which there appears to be a link;

r) VT service providers subject to registration in accordance with Art. 2 Para. 1 Let. k and m to q TVTG and VT agents subject to registration in accordance with Art. 2 Para. 1 Let. u TVTG, insofar as they provide or distribute VT services for the aforementioned VT service providers;

s) Token issuers not subject to registration who are domiciled or resident in the country and issue tokens in their own name or on a non-professional basis on behalf of the principal, insofar as they settle transactions in the amount of 1,000 francs or more, regardless of whether the transaction takes place in a single transaction or in several transactions.

The following table shows the number of transactions in which a connection appears to exist;

t) Operator of trading platforms for virtual currencies or tokens;

u) Persons who deal in works of art or who, when dealing in works of art, act as a

intermediaries, including art galleries or auction houses, if the value of a transaction is 10,000 francs or more, regardless of whether the transaction is made in a single operation or in several operations between which there appears to be a link;

v) Persons who professionally hold third-party assets in safe custody and rent out premises and containers for the storage of valuables, with the exception of the following activities:

1. the storage of objects in lockers in places accessible to the public and visible from all sides;
2. the safekeeping of goods, such as luggage, household items and motor vehicles;
3. the occasional safekeeping of goods, to a limited extent, such as the provision of hotel safes;
4. the safekeeping of non-physical items, such as computer data;
5. safekeeping of objects within the framework of the performance of security transports and other transports;
6. the leasing of commercial and industrial space;
7. other activities determined by the government by decree, which do not have a particular suitability for abuse through money laundering, organized crime and terrorist financing.

2) Due diligence obligations also apply to Liechtenstein branches, agents and representative offices of foreign companies that perform activities within the meaning of paragraph 1 letters a to i.

3) The following due diligence entities shall immediately notify the competent supervisory authority in writing of the commencement of their activities:

- a) Bureaux de change under subsection 1(f);
- b) Attorneys-at-law and law firms licensed under the Attorneys-at-law Act, as well as legal agents within the meaning of Art. 108 of the Attorneys-at-law Act who provide services pursuant to par. 1 letter k;
- c) Lawyers, law companies and legal agents under par. 1 let. m;
- d) Members of the tax advisory professions as defined in paragraph 1(n), with the exception of trustees and fiduciary companies with a license for comprehensive

## Due Diligence Act (DDA)

---

Activity according to Art. 3 para. 1 let. b of the Fiduciary Act;

e) external accountants according to par. 1 let. n with the exception of fiduciaries and trust companies with a license for comprehensive activity according to Art. 3 par. 1 let. b of the Fiduciary Act;

f) Real estate agent according to par. 1 let. p;

g) Persons trading in goods, according to par. 1 let. q;

h) Token issuers pursuant to subparagraph 1(s);

i) Operators of trading platforms for virtual currencies or tokens pursuant to subparagraph 1(t);

k) Persons referred to in subsection 1(u) who trade in works of art or act as intermediaries in the trade in works of art;

l) Persons pursuant to subsection 1(v) who hold assets belonging to third parties in safe custody and rent out premises and containers for the storage of valuables.

### Art. 4

#### *Exceptions from the scope*

This law does not apply to:

a) Institutions that operate exclusively in the field of occupational retirement, disability and survivors' benefits;

b) Retrieved

c) Retrieved

## II. Duties of care

### Art. 5

#### *Scope of due diligence*

1) Due diligence officers shall perform the following duties to a risk-based extent in the cases referred to in paragraph 2:

a) Establishment and verification of the identity of the contracting party (Art. 6);

b) Establishment and verification of the identity of the beneficial owner (Art. 7);

b) Determination and verification of the identity of the distributee of discretionary legal entities and the beneficiary of life insurance and other insurance with investment purpose (Art. 7a and 7b);

c) Establishment of a business profile (Art. 8); and



d) risk-adequate monitoring of the business relationship (Art. 9).

2) Due diligence shall be performed in the following cases:

a) when a business relationship is established;

b) when processing occasional transactions:

1. amounting to 15,000 francs or more, regardless of whether the transaction is made in a single operation or in several operations between which there appears to be a link; or

2. which are transfers of funds within the meaning of Art. 3 No. 9 of Regulation (EU) 2015/847 of more than 1,000 Swiss francs;

c) in case of doubt as to the authenticity or adequacy of previously received data on the identity of the contracting party or the beneficial owner. The Government shall regulate the details by ordinance;

d) in the event of suspicion of money laundering, a predicate offense to money laundering, organized criminality or terrorist financing, regardless of any exemptions, waivers or thresholds;

e) in the case of occasional transactions in cash amounting to 10,000 francs or more carried out by persons referred to in Article 3, paragraph 1, subparagraph q, regardless of whether the transaction is carried out in a single operation or in several operations between which there appears to be a link;

f) in the case of casinos and providers of online money games pursuant to Art. 3 para. 1 let. l in connection with winnings or stakes in money games, or both, upon execution of transactions in the amount of 2,000 francs or more, regardless of whether the transaction is executed in a single operation or in several operations between which there appears to be a connection;

g) in the case of VT service providers pursuant to Art. 3 para. 1 let. r, irrespective of any threshold values, even if transactions pursuant to let. b are involved; let. h remains reserved;

h) in the case of VT exchange service providers operating exclusively physical exchange au- tomats, when settling transactions of 1,000 francs or more, regardless of whether the transaction is made in a single operation or in several operations between which there appears to be a link.

3) If the due diligence obligations cannot be fulfilled:

a) the due diligence officer may not enter into the business relationship or carry out the desired transaction and must check whether a notification has been made in accordance with

Art. 17 is necessary. Art. 18 remains reserved;

b) the person subject to due diligence must terminate the existing business relationship irrespective of any other statutory or contractual provisions, but subject to Articles 35 and 35a, with sufficient documentation of the outflow of assets. Any notification obligations under Articles 17 to 19 remain unaffected.

4) The Government shall regulate by ordinance the procedure in cases where the information and documents required for establishing and verifying the identity of the contracting party and the beneficial owner are not available in full when the business relationship is established.

#### Art. 6

##### *Establishment and verification of the identity of the contracting party*

1) Due diligence parties shall establish the identity of their contracting party and verify it by means of evidential documents.

2) If, in the course of the business relationship, doubts arise as to the identity of the contracting party, the persons subject to due diligence must repeat the process of establishing and verifying the identity of the contracting party.

3) The government shall regulate the details by ordinance.

##### *Establishment and verification of the identity of the beneficial owner*

#### Art. 7

##### *a) Principle*

1) The persons subject to due diligence must establish the identity of the beneficial owner.

2) You must verify the identity of the beneficial owner through risk-based and appropriate measures to satisfy yourself that the beneficial owner is indeed the beneficial owner. In the case of legal entities, this includes risk-based and appropriate measures to establish the ownership and control structure of the contracting party.

3) If, in the course of the business relationship, doubts arise as to the identity of the beneficial owner, the persons subject to due diligence must repeat the process of establishing and verifying the identity of the beneficial owner.

3a) When entering into a business relationship with entities required by Art. 4 of the Act on the Register of Beneficial Owners of Entities to disclose their beneficial ownership, the due diligence officers shall disclose to the competent authorities of the entity the names of the beneficial owners of the entity.

The persons who are obliged to do so are required to obtain a corresponding excerpt from the register.

4) The government shall regulate the details by ordinance.

Art. 7a

*b) Discretionary legal entities*

1) In the case of discretionary entities, due diligence officers must obtain sufficient information about those persons in whose interest the entity is primarily established or operated to ensure that they will be able to determine their identity at the time of disbursement.

2) In the case of discretionary legal entities, the persons subject to due diligence must establish the identity of the recipient of the distribution at the time of payment and verify it by taking appropriate measures; for persons subject to due diligence pursuant to Art. 3 para. 1 subpara. a, this only applies to assets booked with them. If the recipient of the distribution is a legal entity, the beneficial owners of the assets must be identified as the recipient of the distribution and verified by taking appropriate measures.

3) The persons subject to due diligence who professionally provide services in accordance with Art. 3 par. 1 fig. k no. 2 or 4 to a discretionary legal entity must immediately and without being requested to do so disclose the information collected in accordance with par. 1 and 2 to other persons subject to due diligence in accordance with Art. 3 par. 1 with whom the legal entity in question maintains a corresponding business relationship, insofar as the information relates to assets booked with the other person subject to due diligence in accordance with Art. 3 par. 1.

4) With the exception of service providers for legal entities, the persons subject to due diligence shall be exempt from the obligations under paragraphs 1 and 2 with respect to those legal entities vis-à-vis which a domestic service provider for legal entities provides professional services within the meaning of Art. 3 para. 1 subpara. k no. 2 or 4. The persons subject to due diligence may subsequently rely on the fact that no facts pursuant to paragraph 2 have occurred as long as they do not receive any corresponding information from the service provider for legal entities. The due diligence service provider must document the information provided in the due diligence act.

5) In the case of non-profit, tax-exempt legal entities pursuant to Art. 2(1)(b), no determination and verification of the distribution recipients pursuant to para. 2 is required.

6) The government shall regulate the details by ordinance.

Art. 7b

*c) Insurance contracts*

1) Insurance companies must fulfill the following obligations with regard to the beneficiaries of life insurance policies and other insurance policies with an investment purpose:

a) In the case of beneficiaries identified as named natural persons or legal entities, they shall record the name of such person.

b) For beneficiaries identified by characteristics or by category or otherwise, obtain sufficient information about such beneficiaries to ensure that they will be able to establish their identity at the time of disbursement.

2) In the case of life insurance policies and other insurance policies with an investment purpose, the insurance undertakings must establish the identity of the beneficiary at the time of payment and verify it by taking appropriate measures. If the beneficiary is a legal entity, the beneficial owners of the entity must be identified and verified.

Art. 8

*Business Profile*

1) Due diligence officers must prepare a profile of the business relationship, including in particular information on the origin of the assets and the purpose and intended nature of the business relationship (business profile).

2) You must ensure that the data and information contained in the business profile are updated. To this end, you must check at risk-based intervals whether the data and information contained in the business profile are still up to date.

3) The Government shall regulate the details of the business profile by ordinance.

Art. 9

*Risk-adequate monitoring of the business relationship*

1) Due diligence officers must conduct timely, risk-adequate monitoring of their business relationships, including in the course of the

The Company shall perform the checks on the transactions carried out in the business relationship in order to ensure that they comply with the business profile (Art. 8).

- 2) They shall ensure that the risks arising from the development of new products or business practices or from the use of new or improved technologies are assessed in advance and taken into account in the risk assessment pursuant to Art. 9a.
- 3) They must make simple clarifications with reasonable effort if facts or transactions occur that deviate from the business profile.
- 4) They must carry out special investigations if facts or transactions arise that give rise to suspicions that assets are connected with money laundering, predicate offenses to money laundering, organized crime or terrorist financing. While these investigations are being carried out, the persons subject to due diligence may not terminate the business relationship.
- 5) The results of the investigations must be documented in the due diligence files.
- 6) The government shall regulate the details by ordinance.

Art. 9a

*Risk assessment*

- 1) In a risk assessment, due diligence agents must identify and evaluate the risks they face with regard to money laundering, organized crime and the financing of terrorism.
- 2) For the preparation of the risk assessment, subject to Art. 10 Para. 4 and Art. 11 Para. 7, the factors and possible indications of a potentially lower and higher risk specified in Annexes 1 and 2 shall be taken into account in particular. The risk assessment shall also take into account the results of the national risk analysis according to Art. 29b.
- 3) The risk assessment must be documented and kept up to date and made available to the responsible supervisory authority as part of its monitoring activities.
- 4) Due diligence officers must define criteria in their internal directives that designate business relationships and transactions with increased risks and assign the respective business relationships and transactions accordingly.
- 5) The persons subject to due diligence must define effective internal control and monitoring measures to mitigate the risks identified in the national risk analysis pursuant to Art. 29b and the risk assessment pursuant to Par. 1.

The internal control and monitoring measures include in particular:

- a) the form of the due diligence obligations pursuant to Art. 5 para. 1;
  - b) the documentation according to Art. 20; and
  - c) the design of the internal organization and internal directives in accordance with Art. 21.
- 6) The risk assessment pursuant to par. 1 and the measures to mitigate the risks pursuant to par. 5 must be proportionate to the type and size of the due diligence entity.
- 7) The government shall regulate the details by ordinance.

Art. 9b

*Use of computerized systems*

1) For the risk-adequate monitoring of business relationships pursuant to Art. 9, IT-supported systems shall be used to the extent that this is possible and the costs are in adequate proportion to the intended benefits. In principle, the use of a suitable system that corresponds to the state of the art is required.

2) If the persons subject to due diligence do not use an IT-based system as an aid in identifying business relationships and transactions with politically exposed persons, they shall ensure their identification through another appropriate risk management system.

2a) Those subject to due diligence pursuant to Art. 3 par. 1 let. r must use IT-based systems, taking into account the state of the art, to check the history of the corresponding virtual currencies or tokens in the corresponding VT system (Art. 2 par. 1 let. b TVTG) on a risk basis. The Government shall regulate the details by ordinance.

3) If, in the course of exercising their due diligence obligations when entering into a business relationship pursuant to Art. 5, risk-adequate monitoring pursuant to Art. 9, and risk assessment pursuant to Art. 9a, the parties subject to due diligence make use of automated procedures and technologies for decision-making, these must be proportionate to the objective pursued and must not violate the essence of the right to data protection.

to protect the interests of the data subject. The data controller must therefore take appropriate and specific measures to protect the fundamental rights and interests of the data subject. In the case of automated decisions under this provision, the duty of information and notification of the person subject to due diligence pursuant to Art. 13, 14

and 34 of Regulation (EU) 2016/679 as well as the data subject's right of access to the data subject in accordance with Article 15 of Regulation (EU) 2016/679.

Art. 10

*Simplified due diligence*

- 1) If, on the basis of an appropriate risk assessment pursuant to Art. 9a, due diligence agents determine that there is only a lower risk in certain areas with regard to money laundering, organized crime and terrorist financing, the due diligence agent may apply simplified due diligence requirements within the meaning of Annex 1 Section B to the respective business relationship or transaction.
- 2) Before applying simplified due diligence procedures, due diligence officers must satisfy themselves that the business relationship or transaction actually involves a lower level of risk.
- 3) Due diligence officers must monitor transactions and business relationships sufficiently to enable the detection of unusual or suspicious transactions.
- 4) The Government shall regulate the details of the simplified due diligence obligations by ordinance. It may in particular:
  - a) specify other factors and indications to be taken into account in the risk assessment under Art. 9a;
  - b) Identify customer, product, service, transaction, distribution channel or country categories for which simplified due diligence may be applied, provided there is only a lower risk of money laundering, organized crime and terrorist financing;
  - c) designate, in addition to the simplified due diligence obligations within the meaning of Annex 1 Section B, further measures that may be applied within the framework of the simplified due diligence obligations.

*Increased due diligence*

Art. 11

a) *Principle*

- 1) In the cases mentioned in paras. 4 to 6, as well as if due diligence officers determine an increased risk of money laundering, organized crime or terrorist financing on the basis of an appropriate risk assessment pursuant to Art. 9a, they shall apply to the identified business relationships and transactions in addition to the

referred to in Art. 5 to 9

Due Diligence Apply enhanced due diligence as defined in Annex 2, Section B, to adequately manage and mitigate the increased risks.

2) Retrieved

3) Retrieved

4) With regard to business relationships and transactions with politically exposed persons, the due diligence parties must:

a) implement appropriate risk-based procedures to determine whether or not the counterparty, beneficial owner, or distribution recipient is a politically exposed person;

b) obtain the consent of at least one member of the Executive Board before entering into a business relationship with such a contracting party or beneficial owner or, if a contracting party or beneficial owner is identified as a politically exposed person in the course of an existing business relationship, before continuing to do so;

c) obtain the annual approval of at least one member of management for the continuation of business relations with politically exposed persons, with the exception of persons holding important offices in Switzerland, their family members or persons known to be close to them;

d) subject the business relationship to increased ongoing monitoring.

4a) The persons subject to due diligence must take appropriate measures to determine whether the beneficiaries identified in accordance with Art. 7b Para. 2 are politically exposed persons. These measures must be taken at the latest before payment of the insurance proceeds. If a politically exposed person is identified, the persons subject to due diligence are obligated:

a) to inform at least one member of the management level before the insurance proceeds are paid out;

b) subject the entire business relationship to enhanced ongoing monitoring.

5) In the case of cross-border correspondent banking relationships involving the execution of payments with respondent institutions



due diligence pursuant to Art. 3 para. 1 letters a to i ensure that when entering into a business relationship:

a) have sufficient information about the responding institution to understand the nature of its business and, based on publicly available information, to assess its reputation and the quality of its supervision;

b) check the anti-money laundering and anti-terrorist financing controls carried out by the responding institution;

c) obtain the approval of at least one member of the Executive Board before entering into new correspondent banking relationships;

d) document the respective responsibilities with regard to the fulfillment of the due diligence obligations of the two institutions involved.

6) Due diligence officers must intensively monitor the following business relationships and transactions, clarify their background and purpose as far as possible and record the results in writing:

a) complex structures or transactions;

b) unusually large transactions;

c) unusual transaction patterns;

d) Transactions that do not have an obvious economic or recognizable lawful purpose.

6a) The Government shall draw up and keep up to date a list indicating the precise functions which are to be regarded as important public offices within the country in accordance with Article 2(1)(h). The list shall be transmitted by the Government to the EFTA Surveillance Authority (ESA).

7) The Government shall regulate the details of the enhanced due diligence obligations by ordinance. It may in particular:

a) specify further factors and indications to be applied in the risk assessment under Art. 9a;

b) Identify categories of customers, products, services, transactions, distribution channels or countries where enhanced due diligence may be applied if there is an increased risk of money laundering, organized crime and terrorist financing;

c) designate, in addition to the enhanced due diligence obligations as defined in Annex 2 Section B, further measures to be applied within the framework of the enhanced due diligence obligations.

d) Retrieved

e) Retrieved

Art. 11a

*b) for states with strategic deficiencies*

1) With respect to business relationships or transactions involving States with strategic deficiencies, due diligence providers shall apply the enhanced due diligence requirements set forth in Section B of Annex 2.

2) In addition to the enhanced due diligence requirements provided for under Annex 2, Section B, the Government may prescribe by regulation one or more of the following risk mitigating measures with respect to business relationships or trans- actions involving States with strategic deficiencies:

a) Application of additional enhanced due diligence;

b) Introduce enhanced relevant reporting mechanisms or a systematic reporting requirement for financial transactions;

c) Restriction of business relations or transactions with natural persons or legal entities from countries with strategic deficiencies.

3) In addition to the enhanced due diligence obligations set forth in Annex 2, Section B, the Government may, as appropriate, prescribe by regulation one or more of the following measures with respect to States with strategic deficiencies:

a) Denial of the establishment of subsidiaries, branches, or repor- tances of due diligence obligors from the relevant strategically deficient state, or otherwise taking into account the fact that the due diligence obligor in question is from a strategically deficient state;

b) Introduce a prohibition on due diligence entities establishing branches or representative offices in the strategically deficient country or otherwise take into account the fact that the branch or representative office in question would be located in a strategically deficient country;

c) Introduction of enhanced supervisory review by the FMA of branches and subsidiaries of due diligence entities in a state with strategic deficiencies or introduction of

an obligation to conduct an enhanced external review;

d) Introduction of more stringent requirements for the external verification of the

relevant state with strategic shortcomings established branches and subsidiaries of financial groups whose parent company has its registered office in the country;

e) Introduction of the obligation applicable to due diligence officers under Art. 3(1)(a) to (i) to review, amend or, if necessary, terminate correspondent banking relationships with respondent institutions in a jurisdiction with strategic deficiencies.

4) When adopting the measures referred to in paragraphs 2 and 3, the Government shall take into account, as appropriate, relevant evaluations, assessments or reports of international organizations or standard-setting bodies with competence in the field of combating money laundering and terrorist financing with respect to the risks posed by states with strategic deficiencies.

5) The Government shall inform the ESA before issuing a regulation under subsections (2) and (3).

6) The government may regulate the details of the enhanced due diligence requirements for states with strategic deficiencies by ordinance. In particular, it may:

a) notwithstanding the Commission's delegated acts under Article 9(2) of Directive (EU) 2015/849 and based on assessments by international anti-money laundering and counter-terrorist financing bodies, identify additional states with strategic deficiencies;

b) provide for reporting or authorization requirements for business relationships and transactions involving states with strategic shortcomings.

*Information on the client or beneficiary*

Art. 12

*a) for money transfers*

1) Regulation (EU) 2015/847 applies to the transmission of information on the payer or payee in the case of transfers of funds.

2) Regulation (EU) 2015/847 does not apply to domestic transfers of funds to a payment account of a beneficiary to which only domestic transfers of funds are made.

Such payments can be made for the delivery of goods or services if:

a) the payment service provider of the beneficiary is subject to Directive (EU) 2015/849;

b) the beneficiary's payment service provider is able to trace the transfer of funds back to the person who entered into an agreement with the beneficiary for the supply of goods or services by means of an individual transaction code via the beneficiary; and

c) the amount transferred does not exceed 1,000 Swiss francs.

3) The FMA may, within the framework of Art. 25 of Regulation (EU) 2015/847, regulate the details of the obligations of payment service providers.

Art. 12a

*b) for transfers of virtual currencies or tokens*

1) In the case of transfers of virtual currencies or tokens, VT Service Providers shall transmit or obtain information on the Principal or Beneficiary.

2) The government shall regulate the details of the information on the principal or beneficiary by decree.

Art. 13

*Prohibited business relations*

1) Due diligence officers pursuant to Art. 3 para. 1 letters a to i may not maintain correspondent banking relationships with domiciliary banks.

2) They must take reasonable steps to ensure that they do not have business relationships with entities that allow domiciliary banks to use their accounts, deposits or safe deposit boxes.

3) You may not maintain any bearer savings accounts, accounts or custodial accounts.

4) You may not maintain anonymous accounts, safe deposit boxes, passbooks or custody accounts, nor may you maintain accounts, safe deposit boxes, passbooks or custody accounts under fictitious names.

Art. 14

*Delegation of due diligence*

1) The persons subject to due diligence may, insofar as the fulfillment of the obligations under this Act is ensured, have the due diligence obligations under Art. 5 Para. 1 Letters a to c performed by:

a) another due diligence party; or

b) a natural or legal person resident in another EEA Member State or third country:

1. whose due diligence and retention obligations comply with the requirements set out in Directive (EU) 2015/849;

2. whose compliance with the requirements under point 1 is supervised in a manner consistent with Section 2 of Chapter VI of Directive (EU) 2015/849; and
3. which is not licensed in a state with strategic deficiencies according to Art. 2 para. 1 subpara. u.
- 2) The due diligence parties remain responsible for compliance with the due diligence obligations even in the event of delegation.
- 3) Based on assessments by international bodies for combating money laundering and terrorist financing, the FMA shall issue a list of countries whose systems for combating money laundering and terrorist financing meet the requirements of paragraph 1 letter b items 1 and 2.
- 4) This Article shall not apply to outsourcing relationships or agency relationships where, on the basis of a contractual agreement, the outsourcing service provider or agent is to be considered part of the due diligence entity.
- 5) The government shall regulate the details by ordinance.

#### Art. 15

##### *Provision of common services*

1) If several persons subject to due diligence provide services for joint account and using the same company, the duties of due diligence pursuant to Art. 5 Para. 1 may be performed by the mandate-leading person subject to due diligence alone, provided that the business relationship is the same. This shall also apply if several persons subject to due diligence act on joint account and using the same company name in the

SPG

are acting in the capacity of a partner of a partnership or of a body or manager of a legal entity for the account of a third party or in a comparable capacity for the account of a third party of the same legal entity within the meaning of Art. 3 para. 1 subpara. k items 2 or 4.

2) If several persons subject to due diligence who do not act on joint account and do not use the same company name act in the function of a partner of a partnership or of an organ or managing director of a legal entity for the account of a third party or in a comparable function for the account of a third party of the same legal entity within the meaning of Art. 3 Para. 1 Let. k No. 2 or 4, it is permissible to ensure the fulfillment of the due diligence obligations in accordance with Art. 5 Para. 1 through

one of these functionaries as the mandate-leading due diligence officer. The due diligence officers who do not personally fulfill these duties remain responsible for complying with them.

3) Persons subject to due diligence who do not personally fulfill the obligations under Para. 1 or 2 must ensure that:

- a) they are given access to the due diligence files at any time upon request; and
- b) a due diligence officer is appointed by means of a written agreement to perform the duties and the proper fulfillment of the duties is appropriately verified.

Art. 16

*Global application of the standard of due diligence*

1) Duties of care under Art. 3(1)(a) to (i) and (r) that are part of a group must establish group-wide applicable policies and procedures, including data protection policies and procedures for the exchange of information within the group for the purposes of combating money laundering, organized crime and terrorist financing. These policies and procedures must be effectively implemented at the level of branches, agents, representative offices, and majority-owned subsidiaries in EEA member states and third countries. Due diligence entities shall align their group-wide policies and procedures with the minimum requirements under this Act in third countries where the minimum requirements for combating money laundering, organized crime and terrorist financing are less stringent than those under this Act, to the extent permitted by foreign law.

2) The due diligence entities pursuant to paragraph 1 with branches, agents, representative offices and majority-owned subsidiaries in another EEA member state must ensure that these branches comply with the national legislation of the other EEA member state adopted to implement Directive (EU) 2015/849 and to implement Regulation (EU) 2015/847.

3) If branches and majority-owned subsidiaries of due diligence agents pursuant to paragraph 1 in a third country are unable to comply with the measures required under paragraph 1, including those relating to data protection, due to restrictions imposed by foreign law, the due diligence agents shall inform the FMA. The persons subject to due diligence

take additional measures to effectively counter the risk of money laundering, organized crime and terrorist financing. If these additional measures are not sufficient, the FMA may:

- a) prohibit the Group from entering into business relationships in the third country concerned or require existing business relationships to be terminated;
  - b) prohibit the execution of transactions in the third country concerned; or
  - c) if necessary, require the Group to cease operations in the third country concerned.
- 4) In the case of par. 3, the FMA shall inform the European Supervisory Authorities. When assessing which third countries do not permit the measures required under par. 1, the FMA shall take into account any legal restrictions that prevent the proper implementation of these measures, including restrictions relating to confidentiality, data protection and other restrictions that impede the exchange of information.
- 5) The government may regulate the details by ordinance.

#### Art. 16a

##### *Information sharing among due diligence parties*

- 1) The disclosure of information as well as personal data, including personal data on criminal convictions and offenses, in the following areas takes precedence over any government-recognized duties of confidentiality:
- a) within the framework of delegation relationships pursuant to Art. 14; and
  - b) when using correspondent banking services pursuant to Art. 2 par. 1 let. m.
- 2) Art. 17 Para. 2 shall apply *mutatis mutandis*.

III. Duties in case of suspicion of money laundering, organized crime and terrorism financing

#### Art. 17

##### *Obligation to notify the FIU staff unit*

1) If there is a suspicion of money laundering, a predicate offense to money laundering, organized crime or terrorist financing, the persons subject to due diligence must immediately notify the Financial Intelligence Unit (FIU) in writing.

The responsibility for reporting lies with the member of management responsible for compliance with this Act. Likewise, the supervisory authorities and all offices of the state administration shall be subject to the obligation to notify the FIU. The Government shall regulate the procedure for submitting the notification by decree.

2) Lawyers, law firms and legal agents, as well as auditors, auditing firms and special statutory auditors are not obliged to notify the FIU Unit of information they have received:

a) By or about a client in the course of assessing the legal position for that client; or

b) in the course of acting as defense counsel or representative of such client in or concerning any legal proceeding, including advising on the conduct or avoidance of any proceeding, before or after such proceeding or during such proceeding.

#### Art. 18

##### *Transaction execution*

1) Persons subject to due diligence may only carry out transactions for which there is an obligation to submit a suspicious activity report in accordance with Art. 17 Para. 1 after submitting this report. If prior notification of such transactions is not possible or if the prosecution of the person suspected of being involved in money laundering, predicate offenses to money laundering, organized crime or terrorist financing would be impeded, the notification pursuant to Art. 17 Para. 1 may exceptionally be made immediately after the transaction has been carried out. This is subject to judicial measures.

2) The persons subject to due diligence shall execute customer orders relating to significant assets in a form that allows the transaction to be traced in accordance with paragraph 1. The FIU staff unit may approve exceptions to this.

3) Irrespective of the suspicious activity reports submitted, the FIU staff unit may order that an ongoing transaction that could be related to money laundering, predicate offenses to money laundering, organized crime or terrorist financing may not be carried out for a maximum period of two working days. Such a measure must be justified, provided that it does not jeopardize ongoing investigations or analyses in Switzerland or abroad or violate applicable agreements on modalities of cooperation with foreign authorities. The FIU staff unit may, during the



The prosecutor shall analyze the transaction for the duration of the ordered measure, examine the suspicious facts and subsequently forward the results of the analysis to the public prosecutor's office.

4) The FIU staff unit shall be authorized to order a measure pursuant to paragraph 3 at the request of an FIU of another EEA member state.

Art. 18a

*Asset freeze on suspicion of terrorist financing*

The persons subject to due diligence shall freeze assets if the SAR was submitted on the basis of indications of terrorist financing until the competent prosecution authority issues a ruling, but no longer than ten working days from receipt of the notification pursuant to Art. 17 para. 1 by the FIU Unit.

Art. 18b

*Information ban*

1) The persons subject to due diligence as well as their organs and employees may not inform the contracting party, the beneficial owner or third parties, with the exception of the supervisory authorities or the competent law enforcement authorities, that they:

a) make, have made or intend to make a notification to the FIU Unit pursuant to Article 17, paragraph 1; or

b) have received an order from the FIU Unit pursuant to Article 18(3).

2) Likewise, the supervisory authorities and official bodies that have issued a notification under Art. 17 Par. 1 shall be subject to the information prohibition under Par. 1.

3) The prohibition of information according to para. 1 does not apply to a transfer of information between:

a) due diligence obligations pursuant to Art. 3 Para. 1 Letters a to i or between these institutions and their branches and majority-owned subsidiaries in a Member State or in third countries, provided that these branches and subsidiaries fully comply with the group-wide applicable policies and procedures pursuant to Art. 16 and the group-wide applicable policies and procedures meet the requirements of Directive (EU) 2015/849. The FIU staff unit may order a ban on information in accordance with paragraph 1 in individual cases;

b) due diligence obligations under Art. 3(1)(m) and (n) or entities from third countries where requirements equivalent to Directive (EU) 2015/849 apply, provided that they carry out their professional activities, whether as employees or not, in the same legal entity or in a broader structure to which the person belongs and which has common ownership or management, or have common control with respect to compliance with the relevant requirements;

c) due diligence obligations pursuant to Article 3 (1) (a) to (k), (m) and (n) in cases relating to the same customer and the same transaction and involving two or more due diligence obligations, provided that they are due diligence obligations from an EEA Member State or from entities in a third country where requirements equivalent to Directive (EU) 2015/849 apply and provided that they belong to the same professional category and have obligations relating to subject to professional secrecy and the protection of personal data.

4) Due diligence officers pursuant to Art. 3 Para. 1 Letters m and n who endeavor to prevent a customer from committing an unlawful act do not violate the prohibition of information pursuant to Para. 1.

#### Art. 19

##### *Penalty and exclusion of liability*

1) The persons subject to due diligence, the supervisory authorities and the offices of the national administration, as well as their bodies and employees who have made a report to the FIU Unit in accordance with Art. 17 Para. 1, shall be exempt from any civil or criminal liability if it transpires that this report was not justified and that they did not act intentionally.

2) Likewise, whoever is exempt from any civil liability:

a) does not carry out a transaction in accordance with Art. 18 or Art. 18a, although his contractual partner expressly wishes the transaction to be carried out; or

b) according to Art. 5 Para. 3 does not open the business relationship, does not carry out the desired transaction or terminates the existing business relationship.

#### IIIa. Release of information for analysis and statistical purposes Art.

##### 19a

##### *Principle*

1) As part of its duties under Article 4 of the FIU Act, the FIU Unit may request information from persons subject to due diligence for analysis purposes,

to the extent that the relevant information is documented in accordance with Art. 20. The request for information by the FIU staff unit takes precedence over all state-recognized duties of confidentiality. Information that a lawyer has received from or obtained through his party is not covered by this if he assesses the legal situation for this party.

or he defends or represents him in or in connection with legal proceedings.

2) As part of its duties under Art. 5 of the FIU Act, the FIU Unit may request information from due diligence officers on non-personal data relating to business relationships for statistical purposes. Statutory provisions on the protection of secrets remain reserved.

3) The FIU staff unit may set a reasonable time limit for the transmission of information. In justified cases, it may extend the specified time limit.

4) The prohibition of information pursuant to Art. 18b and the exclusion of penalties and liability pursuant to Art. 19 shall apply *mutatis mutandis*.

#### IV. Documentation, data protection and internal organization Art. 20

##### *Documentation requirement*

1) The persons subject to due diligence must document compliance with the due diligence obligations (Art. 5 to 16) and the notification obligation (Art. 17) in accordance with this law. For this purpose, they must keep due diligence files and preserve them. Customer-related documents, business correspondence and receipts must be kept for ten years after termination of the business relationship or after completion of the occasional transaction, whereas transaction-related documents, business correspondence and receipts must be kept for ten years after completion of the transaction or after creation. The government shall regulate the details by ordinance.

2) In cases of simplified due diligence (Art. 10), the person subject to due diligence must document the reason for its application in the due diligence files.

#### Art. 20a

##### *Privacy*

1) Subject to any statutory provisions to the contrary, the persons subject to due diligence may use personal data, including special categories of personal data and personal data relating to criminal convictions and offences, on the basis of this Act solely for the purpose of

The data may not be processed for the purposes of preventing money laundering, organized crime and the financing of terrorism as defined in Art. 1 and may not be further processed in a manner that is incompatible with this Act. It is prohibited to process such data on the basis of this law for other purposes, such as commercial purposes.

2) Retrieved

3) The data protection provisions shall apply to the duty to provide information and notification pursuant to Articles 13, 14 and 34 of Regulation (EU) 2016/679 and the right to information pursuant to Article 15 of Regulation (EU) 2016/679, insofar as these do not conflict with any statutory confidentiality provisions. Art. 18b takes precedence over the duty to inform and notify as well as the right to information.

4) Those subject to due diligence are obliged to delete personal data ten years after termination of the business relationship or after settlement of the occasional transaction. Special statutory time limits remain reserved.

5) Retrieved

Art. 21

*Internal organization*

1) The parties subject to due diligence must take the necessary organizational measures and ensure appropriate internal control and monitoring measures. In particular, they shall issue internal directives, regulate the secure storage of due diligence files and ensure the training and continuing education of their personnel.

2) The internal organization must be designed according to the circumstances and the individual risks, depending on the type and size of the business and the number, type and complexity of the business relationships. The effective performance of internal functions and due diligence must be guaranteed at all times.

3) Retrieved

4) The government shall regulate the details by ordinance.

Art. 22

*Internal functions*

1) The parties subject to due diligence must appoint a contact person for the responsible supervisory authority as well as persons or specialist units for the internal functions of due diligence officer and investigation officer. They must also appoint a member of the management level who is responsible for compliance with this law and the ordinances issued in this regard.

- 2) Substitution must be ensured at all times.
- 3) A person or, if applicable, a specialized body may perform several functions, provided that the implementation of this Act is ensured. The functions of Investigation Officer and Due Diligence Officer may also be performed by the person designated at the management level, provided that the implementation of this Act is ensured.
- 4) The government shall regulate the details by ordinance.

## V. Supervision

### A. Supervisors

#### Art. 23

##### *Responsibilities*

- 1) The supervision and enforcement of this Act and the implementation of Regulation (EU) 2015/847 are incumbent:
  - a) of the FMA regarding persons subject to due diligence pursuant to Art. 3 par. 1 letters a to l and n to v as well as par. 2;
  - b) of the Liechtenstein Bar Association concerning persons subject to due diligence pursuant to Art. 3 para. 1 let. m.
- 2) The supervisory authorities shall take the necessary measures to ensure compliance with this Act and the implementation of the Ordinance. (EU) 2015/847. The responsibility of the FIU staff unit remains reserved.
- 3) The Liechtenstein Bar Association publishes an annual report on:
  - a) the number and results of the checks carried out in accordance with Art. 24 and 25
  - b) the number of violations of the law reported in accordance with Art. 28a; and
  - c) the penalties imposed under Articles 30 to 31b.
- 4) The government shall compile and keep up-to-date a list of due diligence authorities, including their contact details, in order to facilitate and promote effective cooperation and, in particular, the exchange of information. The list shall be provided by the government to the ESA.

#### Art. 23a

##### *Risk-based supervision*

1) The supervisory authorities shall take a risk-based approach to supervision under this Act. To this end, they shall obtain a clear understanding of the domestic risks of money laundering, organized crime and terrorist financing.

2) The supervisory authorities shall prepare a risk profile for each due diligence agent, taking into account in particular the following criteria of the due diligence agent:

- a) the nature, scale, complexity, and riskiness of the business activities;
- b) the design of risk-adequate monitoring in accordance with Art. 9;
- c) the internal risk assessment according to Art. 9a;
- d) the design of the internal organization in accordance with Art. 21 and 22; and
- e) the results of past inspections according to Art. 24 and 25.

3) The supervisory authorities may refrain from drawing up an individual risk profile and instead draw up an industry profile, provided that the risks of an industry are classified as low or medium in the national risk analysis pursuant to Art. 29b.

4) The frequency and intensity of the regular inspections shall be determined both by the risk profile of the person subject to due diligence pursuant to paragraph 2 and by the results of the national risk analysis pursuant to Art. 29b.

5) The government shall regulate the details by ordinance.

#### B. Controls Art. 24

##### *Implementation of ordinary controls*

1) The supervisory authorities shall regularly conduct, or arrange for the conduct of, random ordinary audits of compliance with the provisions of this Act.

##### 2) Retrieved

3) The controls comprise both the formal control of compliance with the documentation obligation and the material control of the plausibility of the due diligence measures taken. The supervisory authorities must also examine the application of the risk-based approach by the due diligence provider in an appropriate manner as part of their inspections. In particular, they must check the following for their appropriateness:

- a) the risk assessment of the due diligence provider according to Art. 9a para. 1; and

- b) the suitability and implementation of the internal control and monitoring measures pursuant to Art. 9a para. 5.
- 4) A report on the results of the inspections shall be prepared in each case.
- 5) If the due diligence entities have a special statutory auditor, they are generally audited on behalf of the supervisory authority or by the supervisory authority itself for compliance with the provisions of this Act.
- 6) All other persons subject to due diligence shall be audited by the supervisory authorities or, on their behalf, by auditors or auditing companies with regard to compliance with the provisions of this Act. The aforementioned persons subject to due diligence may submit two proposals for auditors or auditing companies to the supervisory authorities, indicating their preference. The supervisory authorities may take into account the proposals of the person subject to due diligence in the selection process. The supervisory authorities may restrict the choice of auditors or audit companies for individual categories of persons subject to due diligence, insofar as special professional knowledge is required.
- 7) The documents and data of the inspections may only be processed and stored domestically.
- 8) The information obtained in the course of the controls may be used exclusively to combat money laundering, predicate offenses to money laundering, organized criminality and terrorist financing. Art. 34 remains reserved.
- 9) The costs of the ordinary inspection activities and the associated administrative costs within the meaning of this Act shall be borne by the due diligence agents inspected. The costs of the commissioned third parties shall be based on the applicable customary rates and must be proportionate to the purpose of the inspection activity.
- 10) The Government shall regulate the details, in particular the procedure for carrying out inspections, by ordinance.

Art. 25

*Extraordinary controls*

- 1) Subject to paragraphs 2 and 3, the provisions of Art. 24 shall apply mutatis mutandis to the extraordinary checks (Art. 28 Para. 1 Let. c).
- 2) If the supervisory authority commissions third parties to carry out an extraor

## Due Diligence Act (DDA)

---

If a third party is commissioned to carry out an extraordinary inspection, it shall submit a cost estimate to the supervisory authority for approval at the beginning of the procedure. The costs of the third parties commissioned shall be based on the applicable customary rates and must be proportionate to the purpose of the extraordinary inspection.

3) The costs of extraordinary inspections shall be borne by the inspected persons obliged to exercise due diligence if the inspection reveals a violation of supervisory regulations. In all other cases, the costs shall be borne by the state.

### C. Appointed auditors, auditing firms and special statutory auditors

#### Art. 26

##### *Requirements*

1) Insofar as the inspections are not carried out by the supervisory authority itself, only auditors, auditing companies and special statutory auditors may be commissioned to carry out the inspections:

a) have a license under the Act on Auditors and Auditing Firms or a license under special legislation as auditors;

b) are independent of the due diligence entities being audited; and

c) provide proof of regular participation in external training and continuing education.

2) The Government shall regulate the details of the requirements under subsection 1 by ordinance.

#### Art. 27

##### *Duties*

1) By accepting the engagement, the auditor, the auditing company or the special statutory auditor undertakes to perform the audit,

a) to comply with the principles determined by the supervisory authority on control activities and the performance of controls and to make available to the supervisory authority, upon request, all working papers drawn up in the course of the control for quality review;

b) report to the supervisory authority on their control activities. Material facts may not be concealed in the report. The information in the report must be truthful;

c) to maintain confidentiality about the findings made during its inspection activities.



preserve. Within the scope of their activities under this Act, they shall be subject to official secrecy. Points (b) and (e) and Art. 28 para. 4 are reserved;

d) to process and store the documents and data of the inspections exclusively within the country; and

e) to provide the supervisory authorities, upon request, with all information as well as documents and copies required for the performance of their supervisory activities within the meaning of this Act.

2) The supervisory authority shall determine the details of the minimum content of the inspection reports and the performance of the inspections.

#### D. Measures

##### Art. 28

##### *Supervisory measures*

1) The supervisory authority shall take the necessary measures as part of its supervision of due diligence officers. In particular, it may:

a) Issue rulings, guidelines and recommendations;

b) carry out or arrange for the carrying out of ordinary inspections within the meaning of Art. 24;

c) carry out extraordinary checks or have such checks carried out if there are grounds for doubt as to whether due diligence obligations are being fulfilled or if circumstances exist which make the reputation of the financial center appear to be at risk;

d) prohibit the establishment of new business relationships for a limited period of time in the event of repeated, systematic or serious violations of the provisions of this Act or of Regulation (EU) 2015/847 and in order to prevent further violations;

e) apply to the competent authority for the appropriate disciplinary action. The supervisory authority shall be informed periodically by the disciplinary authority of the status of the ongoing proceedings;

f) require the cessation of a practice that violates the provisions of this Law or Regulation (EU) 2015/847;

g) in the event of repeated, systematic or serious infringements of the provisions of this Act or of Regulation (EU) 2015/847, make public decisions pursuant to Article 31b;

h) in the case of repeated, systematic or serious violations of the

Provisions of this Act or Regulation (EU)

2015/847 temporarily prohibit the exercise of activities authorized by it under special legislation;

i) in case of repeated, systematic or serious violations of the provisions of this Law or Regulation (EU) 2015/847, withdraw the special legal authorization issued by it;

k) in the case of repeated, systematic or serious violations of the provisions of this Act or Regulation (EU) 2015/847, temporarily prohibit members of the management level and other natural persons who are held responsible for the violation pursuant to Art. 33 Para. 1 from performing or taking up management duties authorized by it.

1a) If the supervisory authority becomes aware of violations of this Act, the ordinances issued thereunder or Regulation (EU) 2015/847, it shall take the measures necessary to restore the lawful state of affairs.

1b) If there is reason to believe that activities within the meaning of Art. 3 Para. 1 are being carried out without a license under special legislation or without a notification under Art. 3 Para. 3, the supervisory authority may demand information and documents from the persons concerned and from third parties as if they were persons subject to this Act.

2) The supervisory authorities shall inform the due diligence officers about their practice.

3) The supervisory authorities may issue guidelines that interpret the provisions of this Act and the implementing ordinances in a sector-specific manner.

4) Those obliged to exercise due diligence shall provide the supervisory authorities, upon request, with all information as well as documents and copies that the supervisory authorities require in order to perform their supervisory activities under this Act. This duty shall take precedence over all duties of confidentiality recognized by the state. Art. 17 para. 2 applies mutatis mutandis.

D.

Notificatio

ns Art.

28a

*Reporting violations of the law*

1) The supervisory authorities shall establish an effective and reliable reporting system by means of which potential or actual violations of provisions of this Act and the regulations issued thereunder, of Regulation (EU) 2015/847 or of other laws serving to combat money laundering, organized crime and terrorist financing can be reported via a generally accessible, secure reporting channel.

2) The reporting system shall include at least:

a) special procedures for the receipt of notifications of violations under paragraph 1 and their follow-up;

b) adequate protection for employees of due diligence providers who report internally committed violations under paragraph 1, at least against retaliation, discrimination and other types of unfair treatment;

c) adequate protection of the accused person;

d) the protection of personal data in accordance with the Data Protection Act, both for the person reporting the breaches and for the person alleged to be responsible for the breaches under subsection 1;

e) clear rules ensuring that confidentiality is guaranteed in all cases with regard to the reporting person, unless disclosure of the information is required in the context of a prosecutorial, judicial or administrative procedure.

3) Due diligence entities must have appropriate procedures in place for their employees to report violations under Paragraph 1 internally through a dedicated, independent and anonymous channel if they have 100 or more employees involved in business relationships.

4) A report by employees of persons subject to due diligence shall not be deemed to be a breach of a contractual or statutory duty of confidentiality and shall not result in any liability on the part of such person in this respect, provided that the report is not intended to cause unjustified prejudice to another person.

5) In the event of lack of competence, the supervisory authority shall forward notifications under paragraph 1 to the competent authority.

6) The government may regulate the details by ordinance.

#### Art. 28b

##### *Protection of reporting and suspecting persons*

1) Due diligence officers shall ensure that individuals, including employees and representatives of the due diligence officer, who report a suspicion under Art. 17 to the FIU Unit or a violation under Art. 28a to the supervisory authority are protected from threats, retaliation or hostility and, in particular, adverse or discriminatory measures in the employment relationship.

- 2) Individuals who are subjected to threats, retaliation, hostility or adverse or discriminatory measures in employment because they have reported a suspicion under Article 17 to the FIU Unit or a violation under Article 28a to the supervisory authority may complain to the relevant competent authority in a safe manner.
- 3) The government may regulate the details by ordinance.

E. Legal remedies Art. 29

*Administrative appeal*

- 1) Appeals against decisions and orders of the FMA may be lodged with the FMA Complaints Commission within 14 days of notification.
- 2) Appeals against decisions and orders of the FMA Complaints Commission or the Board of the Bar Association may be lodged with the Administrative Court within 14 days of service.

Va. National risk analysis

Art. 29a

*Principle*

- 1) The authorities responsible for preparing the national risk analysis, in particular the Public Prosecutor's Office, the supervisory authorities, the FIU Unit, the National Police, the Tax Administration, the Office of Justice and other authorities active in the field of combating money laundering, organized crime and terrorist financing, shall take appropriate steps to identify, assess, understand and mitigate the existing risks of money laundering and terrorist financing in this context. The risk analysis shall be updated on a regular basis.
- 2) When preparing the national risk analysis, the results of the risk assessment for the internal market carried out by the European Commission must be taken into account.
- 3) The authorities under subsection 1 shall, as a contribution to the preparation of the national risk analysis and for the purposes of reviewing the effectiveness of national systems for combating money laundering, organized crime and terrorist financing, maintain comprehensive statistics on factors relevant to the effectiveness of such systems.
- 4) The statistics referred to in paragraph 3 shall include:
  - a) Data measuring the size and importance of the various sectors that

fall within the scope of Directive (EU) 2015/849, including the number of due diligence providers and the economic importance of each sector;

b) Data on the measurement of SARs and preliminary judicial inquiries initiated under the national system for combating money laundering, organized crime, and terrorist financing, including the number of SARs filed with the FIU, the subsequent measures taken, and, on an annual basis, the number of preliminary inquiries and investigations conducted. investigations, persons charged and persons convicted under Section 165 of the Criminal Code, the types of predat- ories, if such information is available, and the value in francs of frozen and forfeited funds;

c) if available, data on the number and proportion of SARs that lead to further investigation, together with an annual report to due diligence officers explaining the usefulness of their SARs and the action taken in response;

d) Data on the number of cross-border requests for information made, received, refused, or partially or fully responded to by the FIU Unit, broken down by requesting state;

e) the staff assigned to the supervisory authorities and the FIU staff unit for the performance of their duties;

f) the number of actions taken by supervisors locally and elsewhere, the number of violations found based on actions taken by supervisors, and the number of penalties and administrative actions imposed by supervisors.

5) The Government shall publish annually a consolidated summary of the statistics under paragraph 4 and shall transmit the consolidated statistics to the ESA.

#### Art. 29b

##### *Purpose*

1) The purpose of the national risk analysis is to improve the anti-money laundering and counter-terrorist financing system, in particular in all possible areas in which the due diligence agents must apply enhanced due diligence, to identify and, if necessary, to indicate measures.

- 2) It identifies, where appropriate, sectors or areas of lower or higher risk for money laundering and terrorist financing.
- 3) It provides the basis for allocating and prioritizing resources to combat money laundering and terrorist financing, and for ensuring that appropriate regulations are established for each sector or area commensurate with the risks of money laundering and terrorist financing.

Art. 29c

*Information of the due diligence*

The supervisory authorities and the FIU staff unit shall provide the due diligence agents with adequate information to facilitate their own assessment of the risk of money laundering and terrorist financing.

Art. 29d

*Tasks of the authorities*

- 1) The authorities under Art. 29a shall, within the scope of their duties, obtain the non-personal information and data necessary for the preparation of the national risk analysis.
- 2) They also use existing data relevant to the preparation of the national risk analysis under Art. 29b.
- 3) To the extent necessary, they shall provide each other with the relevant information and data pursuant to paras. 1 and 2 for the purpose of preparing the national risk analysis pursuant to Art. 29b.

Vb. Register of  
accounts Art. 29e

*Operation and purpose of the register of accounts*

- 1) The Office of Justice operates an electronic account register.
- 2) As part of the fight against money laundering, organized crime and terrorist financing, the account register is used to promptly identify all natural or legal persons who hold or control a payment or bank account or safe deposit box at a bank and securities firm that can be identified by the International Bank Account Number (IBAN).

3) The Government shall regulate the details of the operation of the register of accounts by ordinance.

Art. 29f

*Content of the account register*

1) The following data concerning the accounts and safekeeping accounts pursuant to Art. 29e par. 2 shall be included in the register of accounts:

a) with a payment or bank account:

1. the IBAN and the date of account opening and closing;

2. the name and the institution's internal customer identification number or the information required to establish and verify the identity in accordance with Art. 5 Para. 1 Letter a of the account holder or authorized signatories;

3. the name and the institution's internal customer identification number or the information for establishing and verifying the identity pursuant to Art. 5 (1) b) of any beneficial owners;

b) at a safe deposit box:

1. the duration of the rental period;

2. the name and the institution's internal customer identification number or the information for establishing and verifying the identity in accordance with Art. 5 Par. 1 of the tenant.

2) The banks and investment firms referred to in Art. 3 para. 1 let. a shall transmit the data required under para. 1 to the register of accounts on an ongoing basis by electronic means.

3) The Government shall regulate the details of the content of the register of accounts by ordinance.

Art. 29g

*Data processing and security*

1) The information and personal data recorded in the register of accounts may be processed exclusively in individual cases and for the purpose of combating money laundering, organized crime and terrorist financing in accordance with the provisions of this Act. The data may not be processed for other purposes.

2) To the extent necessary to carry out its duties under this Act, the Office of the Judiciary is authorized to use the information recorded in the register of accounts and to

process personal data.

3) The information and personal data recorded in the account register shall be protected by appropriate technical and organizational measures against unauthorized or unlawful processing, accidental loss, destruction or accidental damage.

4) The information and personal data recorded in the account register shall be kept for ten years after termination of the business relationship and then deleted.

5) For the purposes of data protection control, all data processing in the account register shall be logged. The log data shall be transmitted to the data protection agency without delay upon request. Log data may only be processed for the purposes of data protection control by the data protection authority and to ensure data security. The log data may not be processed for other purposes. The following must be logged:

- a) the time of the data processing;
- b) the persons processing the data; and
- c) Purpose and nature of data processing.

6) The log data must be retained for ten years and then deleted.

7) In all other respects, the provisions of data protection legislation apply to data processing and security.

8) The Government shall regulate the details of data processing and security by decree.

#### Art. 29h

##### *Information from the account register*

1) In individual cases, the FIU Unit and the FMA shall be provided with information from the register of accounts by way of electronic inspection, insofar as this is necessary for the purpose of combating money laundering, organized crime and the financing of terrorism.

2) It is not permissible to provide information on an inspection.

3) The Government shall regulate the details of the provision of information from the register of accounts by decree.

VI. Penal Provisions, Administrative Measures, Measures in Business Transactions and Administrative Assistance



A. Penal provisions Art. 30

*Misdemeanors and infractions*

1) The district court shall punish for misdemeanor with imprisonment for a term not exceeding six months or with a fine not exceeding 360 daily penalty units who intentionally:

- a) violates the notification obligation pursuant to Art. 17 Para. 1 Sentence 1;
- b) carries out transactions contrary to Art. 18;
- c) violates the obligation to freeze assets pursuant to Art. 18a;
- d) violates the prohibition of information under Art. 18b(1).

2) Retrieved

2a) The regional court shall impose a fine of up to 100,000 francs on anyone who breaches the duty to provide information to the FIU Unit in accordance with Art. 19a para. 1 or who makes false statements or conceals material facts in this connection.

2b) The district court shall impose a fine of up to 10,000 francs on anyone who refuses to provide the FIU Unit with information in accordance with Art. 19a para. 2.

3) The statute of limitations for prosecution is three years.

4) The liability of legal entities for misdemeanors and infractions

The liability is governed by Sections 74a et seq. of the German Criminal Code (StGB).

Art. 31

*Administrative Violations*

1) The supervisory authority shall impose a fine of up to 200,000 francs on anyone who intentionally:

a) refuses to provide information to the supervisory authority, an auditor, an auditing company or a special statutory auditor, makes false statements or conceals material facts;

a) does not submit periodic reports, does not submit them in accordance with the regulations, or submits them incompletely or late;

b) fails to comply with a request to restore the lawful condition or with any other order of the supervisory authorities issued within the scope of the enforcement of this Act;

c) fails to establish or verify the identity of the contracting party in accordance with Art. 6 or repeats this process;

- d) fails to establish or verify the identity of the beneficial owner in accordance with Art. 7 or fails to do so repeatedly or violates the additional obligations under Arts. 7a and 7b;
- e) does not create or update the profile on the business relationship in accordance with Art. 8;
- f) does not carry out risk-adequate monitoring of a business relationship in accordance with Art. 9;
- f) does not carry out the risk assessment in accordance with Art. 9a, does not do so in accordance with the regulations, does so incompletely or with delay, or does not use computerized systems in accordance with Art. 9b, or does so incompletely or with delay;
- f) applies the simplified due diligence requirements contrary to Art. 10;
- g) fails to comply with the enhanced due diligence obligations pursuant to Articles 11 and 11a;
- g) in the case of transfers of virtual currencies or tokens pursuant to Art. 12a, fails to provide or obtains the information on the ordering party or beneficiary, or does so incorrectly, incompletely or late;
- h) conducts a prohibited business relationship contrary to Art. 13 paras. 1, 3 and 4 or fails to take appropriate measures pursuant to Art. 13 para. 2;
- i) has the due diligence obligations fulfilled by third parties contrary to Art. 14 paras. 1 to 3 or outsources them contrary to Art. 14 para. 4;
- i) violates the obligations under Art. 15 par. 3;
- k) does not ensure the global application of the standard of due diligence according to Art. 16;
- l) fails to create or retain due diligence files in accordance with Art. 20;
- m) does not ensure internal organization in accordance with Art. 21;
- n) does not ensure the internal functions in accordance with Art. 22 or does not ensure that the function holders in accordance with Art. 22 perform the tasks assigned to them fully, in accordance with the regulations and in a timely manner;
- o) as auditor, auditing company or special statutory auditor, violates the duties pursuant to Art. 27 let. a or b, in particular makes false statements in the audit report or conceals material facts, fails to submit the audit report properly or in due time or fails to comply with the principles on control activities determined by the supervisory authority;
- p) as auditor, auditing company or special statutory auditor, violates the duty of confidentiality pursuant to Art. 27 let. c;

- q) as an auditor, auditing company or special statutory auditor, does not process or store documents and data relating to inspections in Switzerland in contravention of Art. 27 let. d;
- r) as auditor, auditing company or special statutory auditor, violates the duty to provide information or to transmit documents and copies pursuant to Art. 27 let. e;
- s) the inspection pursuant to Art. 28 Para. 1 Let. b or c cannot be carried out as a whole or in relation to individual areas of the due diligence obligations;
- s) fails to set up an internal reporting system in accordance with Art. 28a Para. 3;s) fails to report data in accordance with Art. 29f Para. 2, incomplete transmitted constantly or late;
- t) allows outflows of assets contrary to Art. 35 or 35a;
- t) uses a business relation contrary to Art. 35b or does not keep it marked as special;
- u) violates Regulation (EU) 2015/847 by transferring funds:
  1. contrary to Art. 4, 5 or 6, fails to provide or verify the information on the contracting entity or the beneficiary;
  2. contrary to Art. 7 paras. 1 and 2, fails to establish effective procedures for determining missing information on the contracting entity or the beneficiary, or fails to apply such procedures properly;
  3. contrary to Art. 7 paras. 3 to 5, fails to verify the accuracy of the information on the beneficiary;
  4. contrary to Art. 8 paras. 1 and 2, fails to establish or properly implement effective risk-based procedures for handling transfers of funds with missing or incomplete information on the payer or the beneficiary;
  5. contrary to Article 10, fails to ensure that the information on the payer or the beneficiary, which is transmitted in the course of a transfer of funds, is also preserved in the course of the onward transfer;
  6. contrary to Art. 11 paras. 1 and 2, fails to establish effective procedures to identify missing information on the contracting entity or the beneficiary or fails to apply such procedures properly;
  7. contrary to Art. 12 (1) and (2), fails to implement effective risk-based procedures for the

Dealing with transfers of funds with missing or incomplete information on the payer or the beneficiary or does not apply them properly;

8. contrary to Article 16, does not keep the records of the information on the principal and the beneficiary referred to in Articles 4 to 7 for five years.

2) The supervisory authority shall impose a fine of up to 100,000 Swiss francs on anyone who wilfully fails to comply with the reporting obligation under Art. 3 Para. 3.

3) If an administrative offence under paragraph 1 letters c to g, h to n, s, or u numbers 1, 4, 6 to 8 is committed in a serious, repeated or systematic manner by a person subject to due diligence under Article 3 paragraph 1 letters a to i, the fine shall be:

a) in the case of legal entities, up to 5,000,000 Swiss francs or up to 10% of the total annual turnover according to the last available annual financial statements approved by the management body, provided that this amount exceeds 5,000,000 Swiss francs; if the person subject to due diligence is a parent company or the subsidiary of a parent company that is required to prepare consolidated financial statements in accordance with Art. 22 of Directive 2013/34/EU, the relevant total annual turnover is the total annual turnover or the corresponding type of income according to the relevant accounting directives reported in the last available consolidated financial statements approved by the parent company's management body at the head; or

b) for natural persons up to 5 000 000 francs.

4) If an administrative offence under par. 1 letters c to g and i to n is committed by a person subject to due diligence under Art. 3 par. 1 letters k to v in a serious, repeated or systematic manner, the fine shall be:

a) up to 1 000 000 Swiss francs; or

b) up to twice the amount of the profits obtained as a result of the administrative offense, insofar as these can be quantified and exceed the amount under subparagraph (a).

5) The supervisory authority shall impose fines under paragraphs 1, 2, 3(a) or 4 on legal entities if the administrative offences are committed in the course of business and within the scope of the purpose of the legal entity (incidental offences) by natural persons who have acted either alone or as members of the management of the legal entity and who hold a management position within the legal entity by virtue of which they:

a) are authorized to represent the legal entity externally;

b) Exercise powers of control within the legal entity; or

- c) are authorized to make decisions on behalf of the legal entity.
- 6) The supervisory authority shall also impose fines under paragraphs 1, 2, 3(a) or 4 on legal entities if administrative offences are committed by employees of the legal entity, albeit not culpably, and these have been made possible or substantially facilitated by the fact that the persons referred to in paragraph 5 have failed to take the necessary and reasonable measures to prevent such inciting offences.
- 7) The liability of the legal person for the incidental offence and the punishability of the persons referred to in paras. 5 and 6 for the same offence are not mutually exclusive. The supervisory authority may refrain from punishing a natural person if a fine has already been imposed on the legal person for the same violation and there are no special circumstances that prevent the punishment.
- 8) Pursuant to paragraphs 1, 3 and 4, a person shall not be punished who does not personally fulfill the due diligence obligations under Article 5 paragraph 1 under the conditions of Article 15 paragraph 1 or 2 if he:
  - a) has designated, by means of a written agreement, a due diligence agent to perform the duties; and
  - b) adequately verifies the proper fulfillment of the duties.
- 9) The statute of limitations for prosecution is three years.

Art. 31a

*Proportionality and efficiency requirement*

- 1) When imposing penalties under Articles 30 and 31, the regional court and the supervisory authorities shall take into account:
  - a) in relation to the infringement in particular:
    - 1. its severity and duration;
    - 2. the amount of profits generated or losses avoided, as far as quantifiable;
    - 3. the losses incurred by third parties, to the extent quantifiable;
  - b) with regard to the persons responsible for the violation in particular:
    - 1. the degree of fault;
    - 2. the financial strength;
    - 3. the willingness to cooperate;
    - 4. previous violations.

2) In all other respects, the General Part of the Criminal Code shall apply mutatis mutandis.

Art. 31b

*Publication of decisions*

1) The supervisory authorities shall publish on their website final decisions penalizing violations under Art. 31 paras. 3 and 4 and taking measures under Art. 28 para. 1 letters h to k without delay after the penalty and measure have been communicated to the person concerned. The publication shall contain:

- a) Information on the nature and character of the violation; and
- b) the name or company name of the natural or legal person against whom the sanction was imposed.

2) If publication of the information pursuant to paragraph 1 letter b concerning identity would be disproportionate or would jeopardize the stability of the financial markets or ongoing investigations, the supervisory authority may:

- a) publish the decision only after the reasons for its non-publication have ceased to exist;
- b) publish the decision in anonymous form; or
- c) refrain from publishing the decision if the options under subparagraphs (a) and (b) are deemed insufficient to ensure that:
  1. the stability of the financial markets is not jeopardized;
  2. in the case of penalties or measures that are considered minor, proportionality is maintained in the case of publication of such decisions.

3) The supervisory authority may postpone publication in accordance with paragraph 2 letter b for a reasonable period of time if it is foreseeable that the reasons for anonymized publication will cease to exist in the course of this period.

4) The supervisory authority shall ensure that the publication of the decision is available on the website for five years from the date of its publication. In this context, the publication of personal data shall be maintained only as long as one of the criteria of paragraph 2 would not be met.

5) Publication in accordance with paragraph 1 shall be ordered by the supervisory authority and shall take place after this order has become legally effective; this shall not apply to anonymous publications in accordance with paragraph 2 letter b.

Art. 31c

*Notification to the European Supervisory Authorities*

The FMA shall inform the European Supervisory Authorities of all legally enforceable penalties pursuant to Art. 31 par. 3 and measures pursuant to Art. 28 par. 1 letters g to k imposed on persons subject to due diligence pursuant to Art. 3 par. 1 letters a to i. Art. 31b para. 5 shall apply mutatis mutandis.

Art. 32

*Applicability of other penal norms*

Criminal liability based on other criminal law standards is reserved.

Art. 33

*Responsibility*

- 1) If the offences are committed in the business operations of a legal entity, the penal provisions shall apply to the members of the management level and other natural persons who acted or should have acted on its behalf, but with joint and several liability of the legal entity for fines, penalties and costs.
- 2) If a fine or penalty is imposed on the legal entity, the joint and several liability of the legal entity under para. 1 shall cease.

B. Administrative measures Art. 34

*Reservation of further measures*

The right to take further measures against the persons subject to due diligence in accordance with the respective special legislation is reserved.

C. Measures in business transactions

*Lack of disclosure*

Art. 35

*a) Business relations before January 1, 2001*

- 1) If due diligence agents still maintain accounts or custody accounts within the scope of business relationships that were opened before January 1, 2001 and did not require a business profile including the beneficial owner under the law in force at that time, they may not permit any outflows of assets as long as the required information and documents are not available.
- 2) Asset outflows are exceptionally allowed if:

## Due Diligence Act (DDA)

---

- a) the balance of the assets of the business relationship does not exceed CHF 25,000;
- b) there is no suspicion of a connection with money laundering, predicate offenses to money laundering, organized crime or terrorist financing;
- c) the name of the person to whom the assets are transferred is evident from the due diligence files;
- d) the assets are transferred in a form that allows the authorities to trace them; and
- e) the business relationship is terminated immediately after the transfer of the assets.

### Art. 35a

#### *b) Business relationships before January 1, 2016*

1) In the case of business relationships existing prior to December 31, 2015, if due diligence has not been performed to determine the beneficial owners or effective contributors in accordance with the rules in force on

December 31, 2015 applicable due diligence legislation documented by December 31, 2016, they may not allow asset outflows until the required disclosures and documentation are in place.

2) If, in the case of business relationships existing prior to January 1, 2016 to which enhanced due diligence requirements apply pursuant to Article 11, due diligence agents have not repeated the identification and verification of the identity of the beneficial owner by December 31, 2018 at the latest in accordance with the due diligence legislation in force on January 1, 2016, they may not permit any outflows of assets as of January 1, 2019 until the information and documents required under the provisions of this Act are available.

3) If, in the case of business relationships existing prior to January 1, 2016, to which no enhanced due diligence requirements apply pursuant to Art. 11, due diligence officers have not repeated the identification and verification of the identity of the beneficial owner by December 31, 2020 at the latest in accordance with the due diligence legislation in force on January 1, 2016, they shall not be permitted to make any sales to the beneficial owner as of January 1, 2021.

may allow outflows of funds as long as the required information and documents are not available in accordance with the provisions of this Act.

### Art. 35b



*Labeling obligation and prohibition of use*

Business relationships existing prior to the entry into force of the amendment to the Act of September 2, 2020 pursuant to Art. 13 Para. 4 shall be kept as specially marked and may not be used in any way until the due diligence obligations pursuant to Art. 5 have been applied.

D. Administrative assistance Art. 36

*Cooperation of domestic authorities*

1) The domestic authorities, in particular the courts, the Office of the Public Prosecutor, the FMA, the Liechtenstein Bar Association, the FIU Unit, the National Police, the Tax Administration, the Office of Justice and other authorities responsible for combating money laundering, organized crime and terrorist financing are obliged to cooperate closely, provide each other, unsolicited or upon request, with all information necessary to combat money laundering, related predicate offenses, organized crime and terrorist financing, and to provide information and personal data, including personal data on criminal convictions and offenses, and documents.

1a) The FMA may, in compliance with the provisions of data protection law, pass on to parliamentary investigation commissions information that it receives from persons subject to due diligence pursuant to Art. 3 para. 1 let. a and para. 2 within the scope of its supervision under this Act if:

a) the investigative commission has a mandate defined by law or by resolution of the provincial parliament to investigate or examine the activities of the FMA;

b) the information is absolutely necessary for the fulfillment of the mandate pursuant to subparagraph (a);

c) the persons having access to the information arising from the supervisory activities of the FMA are subject to a professional secrecy obligation at least equivalent to that of Art. 37c; and

d) the information, insofar as it originates in another EEA Member State, is disclosed only with the express consent of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their consent.

2) In proceedings relating to Sections 165 and 278 to 278d of the Criminal Code, the public prosecutor's office notifies the supervisory authorities and the FIU Unit of the initiation and discontinuation; the courts forward copies of the relevant judgments. In addition, the due diligence officers who have submitted a notification in the

within the meaning of Art. 17 shall be informed of the outcome of the proceedings concerned.

3) In addition, the public prosecutor's office shall notify the supervisory authorities of the initiation and discontinuation of proceedings in connection with Article 30; the courts shall send copies of corresponding judgments.

Art. 37

*Cooperation with foreign authorities*

1) Supervisory authorities shall provide any information and personal data, including personal data on criminal convictions and offenses, to a requesting competent foreign supervisory authority that performs equivalent tasks to domestic supervisory authorities in the field of combating money laundering, organized crime and terrorist financing if:

- a) the sovereignty, security, public order or other essential interests of the country are not violated;
- b) the recipients or the persons employed and authorized by the recipient are subject to a statutory duty of confidentiality with regard to the information obtained in the course of their official activities and this duty remains in force even after termination of the employment relationship;
- c) it is ensured that the information provided is only used for the purposes specified in paragraph 4;
- d) in the case of information originating from abroad, the express consent of the authority that communicated the information.

and it is ensured that these are only passed on for those purposes to which this authority has agreed.

2) The supervisory authorities may not refuse a request from foreign supervisory authorities for the exchange of information or administrative assistance under paragraph 1 for any of the following reasons:

- a) the request, according to the supervisory authorities, also affects fiscal belongs;
- b) the persons subject to due diligence from whom the requested information originates are subject to secrecy obligations or are obliged to maintain confidentiality. Information protected by a right to refuse to testify and information pursuant to Art. 17 para. 2 are excepted;

- c) an investigation, inquiry, or proceeding is pending domestically, unless the investigation, inquiry, or proceeding would be affected by the exchange of information or administrative assistance;
- d) The nature and position of the requesting foreign supervisory authority differ from the nature and position of the requested domestic supervisory authority.
- 3) The supervisory authorities may request foreign supervisory authorities to transmit all information and personal data, including personal data on criminal convictions and criminal offences, that are necessary for the performance of the duties under this Act. They may forward the information received to competent domestic authorities and bodies; paragraph 4 remains reserved.
- 4) Supervisory authorities may use confidential information received from foreign supervisory authorities as part of the exchange of information only for the following purposes:
- a) to exercise its duties under this Act or other national or European legislation in the field of combating money laundering and terrorist financing, as well as prudential supervision, including the imposition of penalties and administrative measures;
- b) in the context of proceedings on an appeal against a decision of the supervisory authorities, including related court proceedings;
- c) in the context of legal proceedings initiated under special provisions of EEA law in the field of Directive (EU) 2015/849 or in the field of financial services supervision.
- 5) The supervisory authorities shall cooperate with the foreign competent supervisory authorities to the fullest extent possible in the supervision of the due diligence authorities. Such cooperation may include conducting investigations, within the authority of the competent authority whose assistance has been requested, on behalf of the requesting competent authority and subsequently exchanging information obtained in the course of such investigations.
- 6) In the case of due diligence agents pursuant to Article 3 paragraph 1 letters a to i and r that are part of a group whose parent company is domiciled in Liechtenstein, the FMA shall supervise the effective implementation of the group-wide policies and procedures pursuant to Article 16. For this purpose, and in the event that due diligence agents pursuant to

Art. 3 para. 1 letters a to i and r with their registered office in Switzerland are part of a group with a parent company with its registered office in another country, the FMA must cooperate with the competent foreign supervisory authorities. This also applies with regard to branches that are part of a group.

7) The competent foreign supervisory authorities have the possibility of carrying out on-site inspections in Switzerland at the business premises of their branches, agents, representative offices or subsidiaries, or of commissioning a person appointed for this purpose to carry out such inspections. An intended inspection must be coordinated in advance with the competent domestic supervisory authority; the latter may participate in the inspection. The knowledge and findings obtained through the inspection and the related documentation may only be used in accordance with the requirements of paragraphs 1 and 4.

8) For the purpose of cooperation, the supervisory authorities may conclude agreements with the competent foreign supervisory authorities on the practical modalities of the exchange of information.

9) The transfer of personal data to a competent supervisory authority in a third country under this Article shall only be permitted if the conditions of Chapter V of Regulation (EU) 2016/679 are met.

#### Art. 37a

##### *Cooperation with the European Supervisory Authorities*

The FMA shall provide the European Supervisory Authorities with all information they require to carry out their duties under Directive (EU) 2015/849.

#### E. Data

protection

#### Art. 37b

##### *Processing of personal data*

The competent domestic authorities may process or arrange for the processing of personal data, including personal data relating to criminal convictions and criminal offences of persons subject to this Act, to the extent necessary for the performance of their duties under this Act.

#### F. Official Secrets

#### Art. 37c

*Principle*

1) Subject to official secrecy:

a) Persons who are or have been employed by the regulatory agencies; and  
b) auditors and experts appointed by the supervisory authorities with the information obtained in the performance of their duties under this Act.

2) Confidential information received by the persons referred to in paragraph 1 in the performance of their duties under this Act may only be disclosed in aggregate or aggregated form so that individual persons subject to due diligence cannot be identified. Other statutory obligations of the supervisory authorities to publish or pass on information, the exchange of information pursuant to Art. 36 to 37a and the cases covered by criminal law remain exempt.

#### VII. Transitional and final provisions Art. 38

##### *Executive Orders*

The Government shall issue the regulations necessary for the implementation of this Law, in particular on:

- a) the concept of beneficial owner (Art. 2(1)(e));
- b) the concept of a politically exposed person (Art. 2(1)(h));
- b) the exemptions regarding persons who safeguard third-party assets and rent out premises and containers for the purpose of safekeeping valuables (Art. 3 para. 1 let. v);
- c) the threshold values according to Art. 4 let. c No. 5;
- d) the procedure to be followed in the event of doubt as to the authenticity or adequacy of data on the identity of the contracting party or beneficial owner (Art. 5(2)(c));
- e) the procedure in cases where the information and documents required for establishing and verifying the identity of the contracting party and the beneficial owner are not fully available when the business relationship is established (Art. 5 par. 4);
- f) the procedure for establishing and verifying the identity of the contracting partner and the probative value of documents (Art. 6 para. 3);
- g) the procedure for establishing and verifying the identity of the beneficial owner (Article 7(4));

- h) the preparation of a business profile (Art. 8 par. 3);
- i) the design of risk-adequate monitoring of business relationships and the content and scope of clarifications (Art. 9 para. 6);
- i) the preparation of the risk profile (Art. 9a par. 7);
- k) the details regarding simplified due diligence requirements (Art. 10 para. 4),<sup>255</sup>
- l) the details regarding enhanced due diligence requirements (Art. 11 para. 7 and Art. 11a);
- m) the details of the implementation of Regulation (EU) 2015/847;
- m) the details of the originator or beneficiary in the case of transfers of virtual currencies or tokens (Art. 12a para. 2);
- n) the delegation of duties of care (Art. 14 para. 5);
- o) the global application of the standard of due diligence (Art. 16 par. 5);
- p) the procedure for submitting a notification (Art. 17 par. 1);
- q) the details of the documentation obligation, internal organization and internal functions (Art. 20 par. 1, Art. 21 par. 4 and Art. 22 par. 4);
- q) the preparation of the risk profile of the persons subject to due diligence and the implementation of risk-based supervision (Art. 23a para. 5);
- r) the details and procedure for carrying out checks (Art. 24 par. 10);
- s) the details of the requirements for the engagement of auditors, audit firms and special statutory auditors (Art. 26 par. 2);
- t) the reporting of violations of the law (Art. 28a para. 6);
- u) the protection of reporting and suspecting persons (Art. 28b para. 3);
- v) the details concerning the register of accounts (Art. 29e par. 3, Art. 29f par. 3, Art. 29g par. 8 and Art. 29h par. 3).

Art. 39

Repealed

Art. 40

*Repeal of previous law*

It is repealed:

- a) Act of November 26, 2004 on Professional Due Diligence in Financial Transactions (Due Diligence Act, DDA), LGBl. 2005 No. 5;
- b) Act of 25 November 2005 on the Amendment of the Due Diligence Act, LGBl. 2005 No. 281;
- c) Act of May 17, 2006, on the Amendment of the Due Diligence Act, LGBl. 2006 No. 129;
- d) Act of 24 November 2006 on the Amendment of the Due Diligence Act, LGBl. 2007 No. 15;
- e) Act of 20 September 2007 on the Amendment of the Due Diligence Act, LGBl. 2007 No. 270.

Art. 41

*Entry into force*

Subject to the unused expiry of the referendum period, this Act shall enter into force on 1 March 2009, otherwise on the day of promulgation.

By proxy of the Reigning Prince: gez. *Alois*

Hereditary

Prince gez.

*Otmar Hasler*

Princely head of  
government

Appendix 1

SPG

(Art. 9a and 10)

Factors and possible indications of a potentially lower risk as well as measures in the application of simplified due diligence requirements

A. Factors and possible indications of a potentially lower risk

Factors and possible indications of a potentially lower risk within the meaning of Art. 9a and 10 include in particular:

a) factors relating to customer risk:

1. public companies listed on a stock exchange that are subject (by virtue of stock exchange rules or by law or by virtue of enforceable instruments) to disclosure requirements that impose requirements to ensure adequate transparency regarding beneficial owners;

2. public administrations or companies;
  3. beneficial owners residing in lower-risk geographic areas under subparagraph (c);
  4. low assets and low volume of transactions executed;
  5. obvious economic purpose of a business relationship;
  6. business relationship that has existed for a long time;
- b) factors relating to product, service, transaction or distribution channel risk:
1. Low premium life insurance policies;
  2. Pure term life insurance with no surrender value;
  3. Insurance policies for annuity contracts, provided that the contracts neither contain a surrender clause nor can serve as collateral for loans;
  4. Pension systems and pension plans or comparable systems that provide retirement benefits to employees, whereby contributions are deducted from salary and the rules of the Systems do not allow beneficiaries to transfer their rights;
  5. Financial products or services that offer appropriately defined and limited services to specific customers with the aim of inclusion in the financial system ("financial inclusion");
  6. Products where the risks of money laundering and terrorist financing are controlled by other factors, such as restrictions on the electronic wallet or transparency of ownership (e.g., certain types of e-money);
- c) Factors relating to geographical risk Registration, establishment or residence in:
1. EEA Member States;
  2. Third countries with well-functioning systems to combat money laundering and terrorist financing;
  3. Third countries where corruption and other criminal activities are weak, according to credible sources;
  4. Third countries whose anti-money laundering and counter-terrorist financing requirements, according to credible sources (e.g., mutual evaluations, detailed assessment reports, or published follow-up reports).



comply with the FATF Recommendations 2012 and which effectively implement these requirements; these third countries are included in a list by the FMA.

B. Measures in the event of the application of simplified due diligence requirements

Measures to be taken when applying simplified due diligence obligations within the meaning of Art. 10 include, in particular:

- a) Verification of the identity of the contracting party and the beneficial owner after the business relationship has been established;
- b) Reduction of the level of detail in the preparation of the business profile according to Art. 8 para. 1;
- c) Reduction of the frequency of updates of the business profile according to Art. 8 par. 2;
- d) Reduce the intensity of ongoing monitoring and the frequency of transaction reviews by setting appropriate thresholds.

#### Annex 2

(Art. 9a, 11 and 11a)

Factors and possible indications of a potentially higher risk as well as additional measures to be taken when applying enhanced due diligence measures

A. Factors and possible signs of potentially higher risk

Factors and possible indications of a potentially higher risk within the meaning of Art. 9a and 11 include in particular:

a) factors relating to customer risk:

1. exceptional circumstances of the business relationship;
2. beneficial owners, distribution recipients under Art. 7a or beneficiaries under Art. 7b who are resident in high-risk geographical areas under subparagraph (c);
3. Legal entities that serve as instruments for private asset management;
4. Companies with nominal shareholders or shares issued as bearer securities;
5. cash-intensive companies;
6. ownership structure of the company that appears unusual or overly complicated given the nature of the business;
7. high level of assets or high volume of transactions executed;

8. unclear or doubtful purpose of a business relationship;
  9. business relationship that has existed for a short time;
  10. Qualification of the contracting party, the beneficial owner, the recipient of the distribution under Art. 7a or the beneficiary under Art. 7b as a former politically exposed person;
  11. Beneficial owners are third-country nationals who have the right of residence or citizenship of an EEA Member State in exchange for the transfer of capital, apply for or have applied for the purchase of real estate or government bonds or investments in companies in that EEA Member State;
- b) factors relating to product, service, transaction or distribution channel risk:
1. Banks with retail banking operations;
  2. Products or transactions that could promote anonymity;
  3. Business relationships or transactions without personal contacts and without certain security measures such as electronic signatures;
  4. Receipt of payments from unknown or unrelated third parties;
  5. new products and new business models, including new distribution mechanisms, and the use of new or developing technologies for new or existing products;
  6. Transactions relating to oil, weapons, precious metals, tobacco products, cultural goods and other articles of archaeological, historical, cultural or religious significance or of exceptional scientific value, as well as elf legs and protected species;
- c) factors relating to geographical risk:
1. States with strategic deficiencies and other states whose financial systems do not have adequate anti-money laundering and counter-terrorist financing systems, according to credible sources (e.g., mutual evaluations, detailed assessment reports, or published follow-up reports);
  2. Third countries where corruption or other criminal activities are significantly high according to credible sources;
  3. States against which, for example, the European Union or the United Nations has/have imposed sanctions, embargoes or similar measures;

4. States that provide financial or other support for terrorist activities or in which known terrorist organizations are active.

B. Additional measures in case of application of enhanced due diligence measures

The following measures in particular may be considered as additional measures for business relationships and transactions with increased risks within the meaning of Art. 11. In the case of business relationships and transactions within the meaning of Art. 11a, the following measures must be applied:

a) Clarifications based on additional documents, data or information in relation to:

1. the identity of the contracting party and the beneficial owner;
2. the economic background of the total assets of the effective contributor of the assets;
3. the origin of the assets brought in as part of the business relationship or transaction;
4. the intended use of withdrawn assets;
5. the professional and business activity of the contracting party and the economically authorized person;

b) Obtaining the approval of a member of the management level before entering into or continuing a business relationship;

c) Obtaining information on the economic purpose of transactions intended or carried out;

d) more frequent updates of the business profile according to Art. 8 par. 2;

e) intensified ongoing monitoring and more frequent review of transactions by establishing appropriate thresholds and appropriate transaction patterns that require closer scrutiny;

f) Obtaining additional information about the type of business relationship sought.

### **XXIII. Due Diligence Ordinance (DDA)**

from 17 February 2009

on professional due diligence to combat money laundering, organized crime and terrorist financing

Based on Art. 38 of the Act of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime and Terrorist Financing (Due Diligence Act; DDA), LGBl. 2009 No. 47, the Government decrees:

#### I. General provisions Art. 1

##### *Subject and purpose*

1) This Regulation regulates in particular:

- a) establishing and verifying the identity of the contracting party and the beneficial owner;
- b) the content of the business profile;
- c) the risk-adequate monitoring of business relationships;
- d) the risk assessment and the simplified and enhanced due diligence requirements;
- d) the details of the VT Ordering Party or VT Beneficiary in the case of VT Transfers;
- d) the delegation and outsourcing of due diligence as well as the global application of the due diligence standard;
- e) the procedure for submitting a notification to the FIU staff unit;
- f) the documentation requirement and internal organization;
- g) the implementation of controls;
- h) the requirements for the engagement of auditors, audit firms and special statutory auditors;
- i) the requirements for risk-based supervision and electronic reporting.

2) It serves to transpose or implement the following EEA legislation:

- a) Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;
  - b) Regulation (EU) 2015/847 on the transmission of information on transfers of funds.
- 3) The valid version of the EEA legal provisions referred to in this Ordinance results from the promulgation of the Decisions of the EEA Joint Committee in the Liechtenstein Gazette pursuant to Art. 3(k) of the Promulgation Act.

Art. 2

*Politically exposed persons*

- 1) The following functions are considered to be important public offices pursuant to Art. 2 Para. 1 Letter h of the Act, unless they are merely medium or low-level functions:
- a) Heads of state, heads of government, ministers, deputy ministers, secretaries of state and key party officials;
  - b) Members of Parliament or members of comparable state legislative bodies;
  - c) Members of supreme courts, constitutional courts or other high-ranking judicial institutions against whose decisions, except in exceptional circumstances, there is no right of appeal;
  - d) Members of the audit offices or the administrative and management bodies of central banks;
  - e) Ambassadors, chargé d'affaire (chargé d'affaire) and high-ranking officers of the Armed Forces;
  - f) Members of the administrative, management or supervisory bodies of state-owned enterprises;
  - g) Directors, deputy directors and members of the management level and comparable functionaries at international governmental organizations.
- 2) Immediate family members as defined in Article 2(1)(h) of the Act are:
- a) the spouse;
  - b) the partner who is treated as equivalent to the spouse under national law;
  - c) the children and their spouses or partners;
  - d) the parents;

e) the siblings.

3) Persons who are known to be related parties pursuant to Art. 2 (1) (h) of the Act are natural persons who:

a) are known to have joint beneficial ownership of legal entities with a politically exposed person or have other close business relationships with a politically exposed person;

b) are the sole beneficial owners of an entity that is known to have been established for the benefit of a politically exposed person;

c) are closely connected socially or politically with a politically exposed person.

4) Retrieved

5) The FMA shall specify the details of measures for the designation of politically exposed persons in a directive.

### Art. 3

#### *Beneficial owners and recipients of distributions*

1) The following are considered to be beneficial owners:

a) in the case of corporations, including corporately structured institutions or trust enterprises, as well as companies without personality:

1. those natural persons who ultimately, directly or indirectly:

aa) hold or control an interest or voting rights of 25% or more in these entities;

bb) hold 25% or more of the profits of such entities; or

cc) otherwise exercise control over this legal entity;

2. those natural persons who are members of the governing body if, after exhausting all possibilities and provided there are no grounds for suspicion, no persons have been identified in accordance with item 1;

b) in the case of foundations, trusts and institutions or trust enterprises with a similar structure to foundations:

1. those natural persons who are effective non-fiduciary founders, incorporators or settlors, regardless of whether they exercise control over the legal entity after its establishment;

2. those natural or legal persons who are members of the board of trustees or the board of directors or the trustee;

3. any natural persons who are protectors or persons in similar or equivalent functions;
  4. those natural persons who are beneficiaries;
  5. if no beneficiaries have yet been determined, the group of persons in whose interest the legal entity is primarily established or operated;
  6. in addition, those natural persons who ultimately control the legal entity through direct or indirect ownership rights or in some other way;
- c) for insurance contracts: those natural persons who ultimately pay the insurance premiums in economic terms;
- d) in the case of local authorities or public authorities in EEA member states or in Switzerland or in the case of EU and EEA institutions: the legal entity;
- e) in the case of Liechtensteinische Post Aktiengesellschaft, which acts as a direct contractual partner in its own name and for its own account: the legal entity;
- f) in the case of banks, investment firms, fund trading platforms, central securities depositories and insurance companies acting as direct contracting parties in their own name and for their own account: the legal entity;
- g) in the case of entities under subparagraph (f) that meet the requirements of Art. 14(1)(b) of the Act and act as direct contracting parties in their own name and for their own account: the legal entity;
- h) in the case of beneficiaries within the meaning of paragraph 1(b)(4) for which the contracting partner provides evidence that it is a legal entity within the meaning of Art. 2(1)(b) of the Act: the legal entity;
- i) in the case of tax-exempt occupational pension institutions domiciled in the EEA or Switzerland that act as direct contractual partners in their own name and for their own account: the legal entity.
- 2) Control within the meaning of para. 1 means in particular the possibility:
- a) to dispose of the assets of the legal entity;
  - b) change the provisions that shape the legal entity;
  - c) change the beneficiary; or
  - d) to control the exercise of the control options pursuant to subparagraphs (a) to (c).
- 3) In the case of associations and societies without legal personality that fulfill charitable or benevolent purposes as defined in Art. 2(1)(b) of the Act, the natural persons of the governing body must be identified using form C

to be recorded in accordance with Annex 1.

4) In the case of shares or voting rights held directly or indirectly by entities whose equity securities are listed on a regulated market that is subject to disclosure requirements under EEA law or equivalent international standards that ensure adequate transparency of information on ownership, the identification of beneficial owners may be waived.

5) In the case of condominium associations, co-ownership associations entered in the land register, and other legal relationships with a similar purpose, the determination of the beneficial owners may be waived.

6) Paragraphs 1 to 5 apply mutatis mutandis to the determination of the distribution recipients. In the case of distribution recipients for which the contracting partner provides evidence that it is a legal entity within the meaning of Art. 2 Para. 1 Letter b of the Act, the determination of the legal entity shall be sufficient.

#### Art. 4

##### *Definitions in the context of VT transfers*

For the purposes of this Regulation shall be deemed to include:

- a) "VT Transfer": all dispositions of a virtual currency or token within the meaning of Art. 6 of the Token and VT Service Providers Act from one VT Service Provider to another VT Service Provider; VT Transfers are always deemed to be cross-border;
- b) "VT service provider" means a due diligence provider under Art. 3(1)(r) and (t) of the Act;
- c) "VT Account" means a VT identifier or virtual currency or token account;
- d) "VT Ordering Party" means a person who, as a VT Account Holder, performs or arranges for a VT Transfer;
- e) "VT Beneficiary": a person who is to receive a VT Transaction as a Recipient;
- f) "Beneficiary VT service provider" means a VT service provider that has a business relationship with or performs an occasional VT transaction for a VT beneficiary;
- g) "contracting VT service provider" means a VT service provider that has a business be-



The VT client must be a VT client that maintains a relationship with a VT client or performs an occasional VT transaction for such a client;

h) "individual VT transaction identifier" means a letter, number or line combination defined by the VT service provider in accordance with the protocols of the payment and settlement or messaging systems used for the execution of a VT transfer and enabling the allocation of a VT transfer to the VT originator and the VT beneficiary.

#### Art. 5

##### *Designations*

The designations of persons, functions and professions used in this Ordinance shall be understood to mean persons of both male and female genders.

#### II. Due diligence

A. Determination and verification of the identity of the contracting party and the beneficially entitled person

1. Establishment and verification of the identity of the contracting party

#### Art. 6

##### *Principle*

1) When entering into a business relationship or processing an occasional transaction, the due diligence officer shall establish and verify the identity of the contracting party by inspecting a conclusive document (original or authenticated copy) of the contracting party and obtaining and documenting the following information:

a) for natural persons: Surname, first name, date of birth, address of residence, country of residence and nationality;

b) for legal entities: name or company name, legal form, address of registered office, country of registered office, date of incorporation, if applicable place and date of entry in the commercial register as well as the names of the bodies or trustees formally acting for the legal entity in relation to the person subject to due diligence.

2) The person responsible for due diligence must sign and date the documentation in accordance with Paragraph 1.

3) The persons subject to due diligence shall ensure that each person who states that he/she is acting on behalf of the contracting party is authorized to do so. The persons subject to due diligence shall establish the identity of such persons by documenting the information in accordance with Paragraph 1(a) and shall verify this by inspecting a document with probative value.

## Due Diligence Ordinance (DDA)

---

(original or authenticated copy). Article 5(2)(c) of the Act applies *mutatis mutandis*.

### *Evidentiary documents*

#### Art. 7

##### *a) Natural persons*

1) For natural persons, a valid official identification document with a photograph, in particular a travel document (passport, identity card) or driver's license, is considered a conclusive document. A travel document is valid,

if it entitles the holder to enter the Principality of Liechtenstein at the time the identity of the contracting partner is established and verified.

2) If the contracting party cannot obtain such a document from its home country, it must provide confirmation of identity from the competent authority in its place of residence.

#### Art. 8

##### *b) Legal entity*

1) For legal entities that are registered in the Commercial Register, the document is considered to be conclusive:

- a) an extract from the Commercial Register issued by the Commercial Register Authority;
- b) a written extract from a database maintained by the commercial registry authority; or
- c) a written extract from a trustworthy, privately managed register or database.

2) For legal entities that are not registered in the Commercial Register, the document is considered to be valid:

- a) a domestic official confirmation;
- b) the articles of incorporation, the founding documents or the founding contract;
- c) a confirmation of the information according to Art. 6 para. 1 let. b by the selected annual auditor;
- d) an official permit to carry out the activity; or
- e) a written extract from a trustworthy, privately managed register or database.

#### Art. 9

##### *Authentication*

Confirmation of the authenticity of the copy of an evidential document can be issued by:

- a) a branch or group company of the person subject to due diligence;
- b) another due diligence officer pursuant to Art. 3 (1) (a) to (i) of the Act, a lawyer, a fiduciary, an auditor or an asset manager who is subject to Directive (EU) 2015/849 or equivalent regulation and subject to oversight; or
- c) a notary or other public body that usually issues such authenticity certificates.

Art. 10

*Form and treatment of documents*

1) Retrieved

2) When entering into a business relationship or conducting an occasional transaction, the persons subject to due diligence shall make a copy of the original or authenticated copy of the evidential document referred to in Article 7 or 8 and shall certify thereon that they have inspected the original or authenticated copy and shall include the signed and dated copy in the due diligence files.

3) The documents required to verify identity must reflect the current circumstances. Certificates of authenticity, excerpts from the register and confirmations of the selected auditor of the annual financial statements must not be older than twelve months.

2. Determination and verification of the identity of the beneficial owner

Art. 11

*Written declaration of the contracting party*

1) The persons subject to due diligence must collect and document the information pursuant to Art. 6 (1) (a) in order to establish and verify the identity of the beneficial owner. The documentation must be dated.

2) Without prejudice to the fulfillment of the obligations under Articles 7 to 7b of the Act, the persons subject to due diligence must have the accuracy of the information to be collected in the forms confirmed by the contracting party:

- a) by signature; or
- b) by another equivalent procedure in which:

## Due Diligence Ordinance (DDA)

---

1. the contracting party or a person authorized by the contracting party is clearly identified; and
2. the integrity of the information and its authentication by the contractual partner is guaranteed.
- 3) In order to fulfill the obligation under Art. 7(2) of the Act, due diligence agents may not rely exclusively on the information contained in registers containing details of the beneficial owners.
- 4) In the case of collective accounts, custody accounts or policies, the persons subject to due diligence do not have to request confirmation from the contracting partner as defined in paragraph 2. However, they must keep a complete list of the beneficial owners and be informed immediately of any changes. In the case of collective term life insurance, depending on the individual risk, annual notification is sufficient if this nevertheless ensures risk-adequate monitoring. The list must contain the relevant information pursuant to paragraph 1 for each beneficial owner.

### Art. 11a

#### *Record keeping and use of forms*

- 1) The persons subject to due diligence shall keep records of the measures taken to establish the identity of the beneficial owner pursuant to Art. 3 (1) (a); in the case of beneficial owners pursuant to Art. 3 (1) (a) (2), records shall also be kept of any difficulties encountered during the verification process.
- 2) The determination of the beneficial owners pursuant to Art. 3 (1) (a) and (b) must be documented using the appropriate form pursuant to Annex 1 (Form C or T).
- 3) The determination of the distribution recipients pursuant to Art. 7a(2) of the Act shall be documented using Form D as set forth in Appendix 2.
- 4) If the person to be recorded pursuant to Art. 3 par. 1 fig. b no. 1 has already died within ten years prior to the date on which a business relationship was entered into or occasional transactions were carried out, his identity must be established using a form provided by the FMA; if the person died more than ten years ago, it is sufficient to establish the identity of the person concerned in the business profile.

### Art. 12

Repealed

### Art. 13

Retrieved

3. Common provisions

Art. 14

*Safeguarding measures for business relationships and transactions without personal contacts*

- 1) In the case of business relationships and transactions without personal contacts, the personal identification and verification of identity pursuant to Articles 6 and 11 may be replaced by appropriate security measures.
- 2) The FMA shall specify the details of the safeguarding measures pursuant to par. 1 in a guidance document.

Art. 15

*Repeat the establishment and verification of identity*

- 1) The persons subject to due diligence must terminate the business relationship with sufficient documentation of the outflow of assets if, despite repeated ascertainment and verification of the identity of the contracting party or the beneficial owner, there are still doubts about their information.
- 2) Due diligence officers are prohibited from terminating the business relationship if the requirements for the notification obligation under Art. 17(1) of the Act are met.
- 3) If, in the case of an existing insurance contract, the policyholder is replaced by another policyholder, in particular as a result of an assignment, the identity of the contracting party and the beneficial owner must be determined and verified again.

Art. 16

*Correspondent banking relationships*

- 1) Persons subject to due diligence pursuant to Art. 3 (1) (a) to (i) of the Act who provide correspondent banking services for correspondent institutions must, in the case of pass-through accounts, satisfy themselves that the correspondent institution:
  - a) verified the identity of the persons having direct access to the accounts of the correspondent institution;
  - b) has continuously fulfilled its duties of care towards these persons; and
  - c) is in a position to provide relevant data in relation to these due diligence obligations at the request of the person subject to due diligence.

SPG

## Due Diligence Ordinance (DDA)

---

2) When obtaining information to assess the reputation of the responding institution pursuant to Article 11(5)(a) of the Act, it must also be taken into account whether the responding institution has already been the subject of investigations or supervisory measures in connection with money laundering or terrorist financing.

3) In addition to documenting the respective responsibilities for fulfilling the due diligence obligations of the two institutions involved in accordance with Art. 11 para. 5 let. d of the Act, it must be ensured that the respective responsibilities under the due diligence legislation are clearly understood.

Art. 17

Repealed

Art. 18

### *Information and documents when entering into a business relationship*

1) All information and documents required for establishing and verifying the identity of the contracting party and the beneficial owner must be complete and in proper form when the business relationship is established or an occasional transaction is processed.

2) Notwithstanding paragraph 1, due diligence officers may complete the verification of the identity of the contracting party or the beneficial owner after the establishment of a business relationship if

this is necessary for the maintenance of normal business transactions and there is a low risk of money laundering and terrorist financing in accordance with Art. 10 of the Act. In this case, the person subject to due diligence must carry out the verification as soon as possible after the initial contact and ensure that no outflow of assets takes place in the meantime.

3) In derogation of paragraph 1, due diligence officers may, in accordance with Art. 3 para. 1 let. a of the Act, open a bank account, including accounts through which securities transactions may be carried out, provided that sufficient safeguards have been put in place to ensure that transactions (including incoming and outgoing payments) are not carried out until the due diligence obligations under Art. 5 para. 1 let. a and b of the Act have been fully met.

Art. 19

### *Use of qualified certificates by legal entities*

Confirmations in accordance with Art. 11 Para. 2 may also be issued by legal entities using their qualified electronic seal or by using a

qualified electronic signature of a natural person authorized to represent the legal entity.

B. Business profile Art. 20

*Business profile content*

1) The business profile according to Art. 8 of the Law shall contain the following information:

- a) Contractual Partner and Beneficial Owner;
- b) Agents and bodies acting in relation to the person subject to due diligence;
- c) Origin of the assets contributed;
- d) economic background of the total assets, including profession and business activity of the effective contributor of the assets; and
- e) Intended use of the assets.

2) The level of detail of the disclosures pursuant to paragraph 1 letters c to e shall take into account the risk of the business relationship.

3) The person obliged to exercise due diligence must document the information in accordance with Para. 1. The documentation must be dated and signed.

C. Risk-adequate monitoring of the business relationship

Art. 21

*Computerized systems*

1) Those subject to due diligence must use an IT-based system to identify business relationships and transactions with politically exposed persons if the total number of managed business relationships exceeds 100; for those subject to due diligence pursuant to Art. 3 Para. 1 Letters r, s and t of the Act, this applies irrespective of the number of managed business relationships.

2) In the case of business relationships and transactions with increased risks, due diligence officers pursuant to Art. 3 (1) (r) of the Act shall use state-of-the-art IT-based systems to check the transaction history of the corresponding virtual currencies or tokens as part of the application of enhanced due diligence pursuant to Art. 11 of the Act.

Art. 22

*Clarifications*

1) Simple clarifications pursuant to Art. 9 Para. 3 of the Act serve to check the plausibility of facts or transactions that deviate from the business profile.

## Due Diligence Ordinance (DDA)

---

In this context, the duty of due diligence must obtain, evaluate and document information that is suitable for making the background of such facts or transactions comprehensible and understandable.

2) Within the framework of special investigations pursuant to Art. 9 Para. 4 of the Act, the person subject to due diligence must obtain, evaluate and document such information as is suitable to dispel or substantiate any suspicions pursuant to Art. 17 Para. 1 of the Act.

D. Risk assessment and simplified and strengthened due diligence requirements

### Art. 22a

#### *Risk assessment*

1) The allocation of business relationships and transactions under Art. 9a(4) of the Act must take into account the current risk.

2) The risk assessment must be documented in such a way that it enables expert third parties to make a reliable judgment about the individual risks and about the application of the simplified and enhanced due diligence requirements. In all other respects, Art. 28 shall apply.

3) An update of the risk assessment in accordance with Art. 9a Para. 1 and 3 of the Act must be carried out at regular intervals, but at least once every three years. In addition, the risk assessment must be updated in each case of relevant risk-changing events.

### Art. 22b

#### *Simplified due diligence*

1) If the persons subject to due diligence have determined a low risk with regard to money laundering, organized crime and terrorist financing pursuant to Art. 10 of the Act, the confirmation on the copy of the evidential document pursuant to Art. 10 Para. 2 may be waived, provided that the establishment and verification of identity is ensured by taking other measures. Further measures pursuant to Annex 1, Section B of the Act remain unaffected.

2) Retrieved

3) In the case of units in collective investment undertakings which meet the requirements of Directive 2009/65/EC or Directive 2011/61/ EU and which are subscribed or held by banks, fund trading platforms or central securities depositories from countries which have due diligence and safekeeping obligations and supervisory standards that are in line with the requirements of Directive (EU) 2015/849 and which act as a direct contracting party in their own name but on behalf of a third party.



If a company is acting or has acted on behalf of a third party, the obligation under Articles 6(1) and 7(1) and (2) of the Act may be fulfilled by the person subject to due diligence:

a) establishes the identity of the subscribing institution by means of a share register or a subscription form;

b) takes risk-based measures to assure itself that the risk related to money laundering, organized crime and terrorist financing is minimized based on an assessment of the client's risk profile.

product, investment, distribution channel and country risk is low; and

c) reviews the internal control and monitoring measures of the subscribing institution in order to satisfy itself that the subscribing institution is exercising risk-based and appropriate due diligence with respect to its own clients within the meaning of Art. 5 para. 1 of the Act.

3a) Paragraph 3 shall not apply to investment undertakings under the Investment Undertakings Act and to undertakings for collective investment that serve the purpose of individual asset structuring.

3b) The FMA may specify the details of the application of par. 3 in a guidance document.

4) Persons subject to due diligence under Article 3(1)(a) of the Act may fulfill the obligation under Article 7(1) and (2) of the Act in the case of a lawyer or law firm licensed under the Lawyers' Act and legal agents within the meaning of Article 108 of the Lawyers' Act by the lawyer or legal agent confirming in a written statement that the accounts or deposits serve exclusively one of the following purposes:

a) Settlement and, if applicable, related short-term investment of court cost advances, deposits, public-law levies (identifier: e.g. "Court cost advances, deposits, public-law levies");

b) Deposit and, if applicable, associated investment of assets from a pending division of an estate or execution of a will (identification: e.g. "inheritance" or "division of an estate");

c) Deposit/investment of assets from a pending property division in the context of a divorce or separation (identification: e.g. "Property division divorce");

d) Collateral deposit/investment of assets in civil law or

## Due Diligence Ordinance (DDA)

---

public law matters (marking: e.g. "blocked deposit share purchase", "security deposit entrepreneur deposit", "security deposit real estate profit tax");

e) Deposit/arrangement of assets in civil or public law matters before ordinary courts or arbitration courts and in proceedings of execution law

(Identification: e.g. "advances", "securing court deposit", "insolvency estate", "arbitration proceedings").

5) The person subject to due diligence shall mark the accounts or deposits accordingly in accordance with paragraph 4.

6) The application of simplified due diligence pursuant to Art. 10 of the Act is excluded if there is a suspicion of money laundering, a predicate offense to money laundering, organized crime or terrorist financing or if there are facts and possible indications of a potentially higher risk.

### Art. 23

#### *Due Diligence for Politically Exposed Persons*

1) Due diligence officers must continuously apply enhanced due diligence procedures in business relationships with politically exposed persons.

2) Notwithstanding paragraph 1, due diligence officers may conduct a risk assessment of business relationships with persons holding important public offices in Austria and, if no increased risks have been identified, apply regular due diligence measures.

3) The FMA shall regulate the details in a directive.

### Art. 23a

#### *States with strategic shortcomings*

States with strategic deficiencies within the meaning of Article 2(1)(u) of the Act are listed in Annex 4.

D. Information on the VT orderer or VT beneficiary in the case of VT

transfers Art. 23b

#### *Scope*

The provisions of this section apply to VT transfers exceeding the amount of 1 franc, whether or not the VT service providers involved in the VT transfer are registered as such.

Art. 23c

*Determination of the other party*

- 1) Prior to the conclusion of a VT Transfer, the VT Service Providers shall determine whether the respective counterparty is a VT Service Provider.
- 2) A determination pursuant to paragraph 1 may be omitted if the Other Party has already been determined to be a VT Service Provider in the course of a previous VT Transfer and this has been documented accordingly.
- 3) The FMA shall specify the details of the determination of the counterparty in a wayleave.

Art. 23d

*Collection and transmission of data for VT transfers*

- 1) In the case of VT transfers, the ordering VT service provider must collect the following information and provide it to the benefiting VT service provider:
  - a) the name of the VT Ordering Party and the VT Beneficiary;
  - b) The designation or number of the VT accounts of the VT Ordering Party and the VT Beneficiary; and
  - c) the address, number of a valid official identification document, customer number or date and place of birth of the VT Ordering Party.
- 2) If a VT transfer does not take place from or to a VT account, the individual transaction code must be collected and transmitted instead of the information in accordance with paragraph 1(b).
- 3) Prior to the completion of a VT transfer, the VT service providers shall determine how the information pursuant to paragraph 1 is to be transmitted.
- 4) The FMA shall specify the details on the collection and transmission of information in the case of VT transfers in a guidance document.

Art. 23e

*Verification of data for VT transfers*

- 1) Before completing a VT transfer, the ordering VT service provider must check whether the information to be transmitted in accordance with Art. 23d is correct, complete and suitable.
- 2) The FMA shall specify the details regarding the verification of information in the case of VT transfers in a guidance document.

Art. 23f

*Data not submitted, not submitted in accordance with the regulations, incomplete or submitted late*

- 1) The beneficiary VT service provider shall establish effective risk-based procedures to determine whether a VT transfer is to be rejected or suspended due to non-provided, improperly provided, incomplete or late information pursuant to Art. 23d and what further measures are to be taken.
- 2) If the beneficiary VT service provider establishes that information in accordance with Art. 23d has not been transmitted, has not been transmitted in accordance with the regulations, is incomplete or has been transmitted late, it must reject the VT transfer order on a risk-oriented basis or request the prescribed information in accordance with Art. 23d, setting a deadline of three days. A VT transfer may not be completed until the requested data have been transmitted and made available to the VT beneficiary.
- 3) If an ordering VT service provider repeatedly fails to provide the prescribed information in accordance with Art. 23d, the benefiting VT service provider may, after issuing a reminder and setting a deadline, reject all future VT transfer orders of the ordering VT service provider or limit or terminate the business relationship with the latter.
- 4) The FMA shall specify the details with regard to information that is not submitted, not submitted in accordance with the regulations, incomplete or submitted late in a guidance document.

E. Delegation and outsourcing of due diligence and global application of the due diligence standard

Art. 24

*Delegation of due diligence*

- 1) If the person subject to due diligence has the identity of the contracting party, the beneficial owner or the business profile established by a delegate within the meaning of Art. 14 para. 1 of the Act determined and verified, the due diligence must be carried out by a third party:
  - a) ensure that the delegate obtains or prepares the documents and information in accordance with the provisions of the law and this Ordinance and promptly transmits them to the person responsible for due diligence in the Principality of Liechtenstein, including, if applicable, documentation on security measures in accordance with Article 14; and
  - b) the delegate confirm with his signature that:

1. the copies made in the course of the determination and verification correspond to the original or authenticated copies; and
2. the written statement to be obtained in the course of establishing and verifying the identity of the beneficial owner originates from the contracting party or from a person authorized by the contracting party.
- 2) The delegation must be documented.
- 3) Subdelegation by the delegates is excluded.
- 4) A due diligence provider pursuant to Art. 3 Para. 1 Letters a to i of the Act satisfies the requirements under Art. 14 Para. 1 Letters a or b Letters 1 and 2 of the Act and under Para. 1 through its group-wide applicable policies and procedures under Art. 16 of the Act if the following conditions are met:
  - a) the due diligence officer draws on information from a delegate who belongs to the same group;
  - b) the due diligence, documentation and internal organization obligations applied in this group are in compliance with Directive (EU) 2015/849, the Due Diligence Act and this Regulation or an equivalent regulation; and
  - c) the effective implementation of the requirements referred to in point (b) is supervised at group level by the competent authority of the home Member State or the third country.
- 5) In the cases referred to in paragraph 4, the persons subject to due diligence may use copies of the documents obtained within the group to establish and verify the identity of the contracting party and the beneficial owner in accordance with Article 5 paragraph 1 letters a and b of the Act.

Art. 24a

*Outsourcing*

- 1) The risk-adequate monitoring of the business relationship pursuant to Art. 5 para. 1 let. d of the Act may, to the extent that the fulfillment of the obligations under the Act and this Ordinance is ensured, be performed exclusively by outsourcing service providers for the due diligence provider if:
  - a) the outsourcing solution is based on a written contract;
  - b) the outsourcing service provider:
    1. Is another due diligence officer under the Act; or

2. is a natural or legal person resident in another EEA Member State or third country pursuant to Article 14(1)(b) of the Act;

c) it is contractually ensured that the outsourcing service provider is unreservedly and unrestrictedly subject to the relevant internal instructions of the due diligence provider for the performance of this activity; the due diligence provider must also have an unrestricted and direct right of instruction vis-à-vis the outsourcing service provider with regard to the execution of risk-adequate monitoring;

d) it is contractually stipulated that the following documents are to be transmitted at least quarterly to the person responsible for due diligence in the Principality of Liechtenstein:

1. Documents showing all transactions and the status of assets; and

2. the documentation on simple clarifications made in accordance with Art. 9, para. 3 of the Act;

e) the party subject to due diligence has contractually granted itself a full and unrestricted right of inspection and review at any time. The outsourcing service provider shall be obligated to immediately transmit the relevant files to the due diligence provider in the Principality of Liechtenstein upon request of the due diligence provider;

f) the outsourcing service provider is contractually obliged, in cases where it carries out special clarifications pursuant to Art. 9 Para. 4 of the Act and/or submits suspicious activity reports pursuant to Art. 17 of the Act, to immediately transmit the relevant documents to the due diligence officer in the Principality of Liechtenstein;

g) the outsourcing service provider does not transfer the tasks assigned to it to a third party.

1a) The identification and verification of the identity of the contracting party and the beneficial owner as well as the preparation of the business profile pursuant to Art. 5 par. 1 letters a to c of the Act may, to the extent that the fulfillment of the obligations under the Act and this Ordinance is ensured, be performed by outsourcing service providers for the person subject to due diligence if:

a) the outsourcing solution is based on a written contract;

b) it is contractually ensured that the outsourcing service provider for the performance of this activity is subject to the relevant internal instructions of the person subject to due diligence without reservation and without restriction; the person subject to due diligence must also have an unrestricted and direct right of instruction vis-à-vis the outsourcing service provider with regard to the execution of the determination and verification of the identity of the contracting party and the beneficial owner, as well as

the creation of the business profile;

c) it is contractually ensured that the outsourcing service provider obtains or prepares the documents and information in accordance with the provisions of the law and this Ordinance and promptly transmits them to the due diligence agent in the Principality of Liechtenstein, including a reference to the identity of the person carrying out the determination and verification;

d) the outsourcing service provider does not transfer the tasks assigned to it to a third party; and

e) the outsourcing service provider is not established in a state with strategic deficiencies under Art. 2(1)(u) of the Act.

2) The due diligence agent in the Principality of Liechtenstein remains responsible for compliance with the due diligence obligations even in the case of outsourcing.

3) The supervisory authority may prohibit the person subject to due diligence from outsourcing or continuing to outsource the risk-adequate monitoring, the identification and verification of the identity of the contracting partner and the beneficial owner, and the preparation of the business profile.

3a) Repealed

4) The guidelines on outsourcing pursuant to Annex 6 of the Banking Ordinance remain reserved.

#### Art. 25

##### *Global application of the standard of due diligence*

1) Due diligence officers pursuant to Art. 3 para. 1 letters a to i and r of the Act shall ensure in particular in their group-wide applicable policies and procedures pursuant to Art. 16 of the Act that:

a) the persons or specialized units responsible for ensuring compliance with the policies and procedures to be applied at Group level, the Group's internal auditors and the external auditors have access to the following information, including personal data, in all Group companies, if necessary:

1. Information on business relationships and transactions, including clarifications pursuant to Art. 9 paras. 3 and 4 of the Act;

2. Information provided with a SAR, unless otherwise instructed by the FIU Unit or the FIU of another EEA Member State or third country; and

3. other information required for due diligence compliance and review, and risk management;

b) the group companies provide the persons or departments responsible for compliance with the policies and procedures to be applied at group level, the internal audit and the external auditors of the group with the information according to a) above;

c) the group companies receive the information pursuant to a) above to the extent that it is relevant and necessary for risk management;

d) a person or specialist unit responsible for compliance with the policies and procedures to be applied at Group level is appointed, as well as an independent internal audit function;

d) the confidentiality of the data is guaranteed and the requirements under Art. 18b par. 1 and 3 and Art. 20a of the Act are implemented; and 108

e) the organizational measures pursuant to Art. 31 Para. 2 Letters f, h and k are taken at group level.

2) Persons subject to due diligence pursuant to Art. 3 para. 1 letters a to i and r of the Act who form part of a domestic or foreign group must, if necessary, provide the persons or specialist units responsible for compliance with the policies and procedures to be applied at group level, the internal audit and the external auditors of the group with access to

provide information in accordance with Paragraph 1(a) to the extent necessary for the global application of the due diligence standard.

3) Due diligence agents pursuant to Art. 3 para. 1 let. h of the Act must also regulate the duties of the agents used and monitor compliance with them in their group-wide applicable policies and procedures pursuant to Art. 16 of the Act.

4) If due diligence entities pursuant to Art. 3(1)(a) to (i) and (r) hold a branch or a majority-owned subsidiary in a third country, Delegated Regulation (EU) 2019/758 supplementing Directive (EU) 2015/849 shall apply accordingly.

5) The FMA shall specify the details of the global application of the due diligence standard in a guidance document.

### III. Notifications to the FIU Staff Unit

Art. 26

*Principle*



- 1) The notification under Article 17(1) of the Act contains all the information necessary for the FIU to make an assessment.
- 2) The FIU staff unit shall confirm receipt of the suspicious activity report in writing.
- 3) The FIU staff unit may issue guidance on the filing of notifications and a standardized notification form.
- 4) The indications for money laundering, organized crime and terrorist financing are listed in Annex 3.

Art. 26a

*Communication in special cases*

If there is a suspicion of money laundering, a predicate offense to money laundering, organized crime or terrorist financing pursuant to Art. 17 para. 1 of the Act, and if the persons subject to due diligence reasonably come to the conclusion that the fulfillment of the due diligence obligations in the cases pursuant to Art. 5 para. 2 let. d of the Act does not violate the prohibition on the disclosure of information under

If the FIU would violate Art. 18b Para. 1 of the Act, it shall refrain from further exercising its due diligence obligations and instead immediately report the matter to the FIU Unit.

IV. Documentation and internal organization

Art. 27

*Due diligence files*

- 1) The due diligence files shall contain, in particular, the documents and evidence drawn up and consulted in order to comply with the provisions of the Act and of this Ordinance. They must contain in particular:
  - a) the documents and records that have served to establish and verify the identity of the contracting party, the person acting on its behalf, if any (Art. 6 par. 3), and the beneficial owner;
  - a) in the case of Art. 3 Para. 1 Letters d to i, Para. 3 and 4, proof that the preconditions for the applicability of these provisions are met;
  - b) the business profile according to Art. 8 of the Law;
  - c) the documentation on any clarifications pursuant to Art. 9 of the Act as well as all documents, records and evidence consulted in this connection;
  - c) the reason for applying simplified or enhanced due diligence requirements under Articles 10 and 11 of the Act;

- d) Documents showing transactions and, if applicable, the financial position;
  - d) in the case of business relationships or transactions of persons subject to due diligence with regard to virtual currencies or tokens, the VT identifier pursuant to Art. 2 para. 1 let. d TVTG;
  - e) any notifications to the FIU staff unit pursuant to Art. 17, para. 1 of the Act;
  - f) the documentation on the risk assessment according to Art. 9a of the Law;
  - g) if applicable, documentation on security measures in accordance with Art. 14; and
  - h) the information to be transmitted in the case of VT transfers in accordance with Art. 23d para. 1.
- 2) The documents and records referred to in paragraph 1 letters a to c, f and g are customer-related, while those referred to in paragraph 1 letters d to e and h are transaction-related documents and records within the meaning of Article 20 paragraph 1 of the Act.

Art. 28

*Creation, storage and access*

- 1) Due diligence files must be prepared and maintained in a manner that:
- a) the required due diligence can be performed at any time;
  - b) they enable competent third parties to make a reliable judgment on compliance with the provisions of the law and this Ordinance; and
  - c) requests of competent domestic authorities and courts, auditors, auditing and inspection bodies can be fully complied with within a reasonable period of time.
- 2) Due diligence records may be maintained in writing, electronically, or in a comparable manner if:
- a) thereby ensuring consistency with the underlying documents;
  - b) they are available at all times; and
  - c) they can be made readable at any time.
- 3) The stored image and data carriers within the meaning of paragraph 2 must be regularly checked for integrity and readability.
- 4) The examination of the records must not be more difficult or require more time than the examination of the underlying documents.

- 5) The due diligence files must be stored in a place in the country that is accessible at all times.
- 6) The due diligence officer, the investigating officer and the member of the management level must be granted access to the due diligence documents at all times in order to perform their duties.

Art. 29

*Electronic records*

- 1) If records are maintained electronically, they shall be accompanied by the following information:
  - a) Names of the persons entrusted with the recording;
  - b) The nature and extent of the records recorded;
  - c) Place and date of recording;
  - d) damage to documents and image and data carriers detected during recording or storage.
- 2) When the recording is finished, it is immediately checked for defects; if there are any, the recording is repeated.

Art. 30

Repealed

Art. 31

*Internal directives*

- 1) The persons subject to due diligence shall issue internal directives on how the obligations arising from the law and this Ordinance are to be fulfilled in concrete terms, and shall in particular specify how suitable strategies, procedures and controls are to be implemented. They shall make the instructions known to all employees who perform activities relevant to the duty of care.
- 2) They regulate therein in particular:
  - a) the tasks, responsibilities, competences and subordination of the internal functions according to Art. 22 of the Law;
  - b) the content, keeping and storage of due diligence files; for electronic recording and reproduction, regulations regarding organization, responsibility and technical procedures are required in particular;

## Due Diligence Ordinance (DDA)

---

- c) ensuring the identification and verification of the identity of contractual partners and beneficial owners, as well as the monitoring of business relationships;
- c) ensuring the updating of the business profile;
- d) the procedure to be followed by employees in the event of facts or transactions pursuant to Art. 9 paras. 2 to 4 of the Act, in particular the notification of the due diligence officer and the procedure to be followed in the event of notification to the FIU staff unit;
- e) which factors they apply to determine risks in accordance with Art. 9a paras. 1 and 2 of the Act and Art. 22a of this Ordinance;
- f) which control and monitoring measures they are taking to counter the identified risks in accordance with Art. 9a (5) of the Act;
- g) the cases in which the management level must be informed;
- g) how the control and monitoring measures of the investigator (Art. 35) are designed and carried out;
- h) the main features of the training and further education of employees who perform activities relevant to the duty of care;
- i) the business policy regarding politically exposed persons and the risk management system used to determine whether a politically exposed person is involved in a business relationship;
- k) appropriate screening measures to be applied when hiring new employees to ensure high standards of reliability and integrity. Documentation may also be provided in other appropriate internal documents; and
- l) the procedures at VT service providers:
  1. to determine the counterparty in accordance with Art. 23c;
  2. for the collection and transmission of data in the case of VT transfers in accordance with Art. 23d; and
  3. for verification of data in VT transfers under Art. 23e.
- 3) The instructions are to be issued by the management level.

### Art. 32

#### *Education and training*

The duty of care bearers shall ensure that employees who perform activities relevant to the duty of care receive up-to-date and comprehensive training and continuing education. This must include knowledge of the regulations for preventing and combating

of money laundering, predicate offenses to money laundering, organized crime and terrorist financing, as well as knowledge of data protection law, in particular:

- a) the obligations arising from the law and this Ordinance;
- b) the relevant provisions of the Criminal Code;
- c) the internal directives pursuant to Art. 31;
- d) Knowledge that enables employees to recognize transactions that may be related to money laundering, organized crime or terrorist financing and to act correctly in such cases;
- e) the relevant provisions of data protection legislation.

Art. 33

*Tasks of the contact person*

- 1) The contact person shall ensure contact between the person subject to due diligence and the supervisory authority.
- 2) The appointment and change of the contact person must be notified to the supervisory authority without delay.

Art. 34

*Tasks of the due diligence officer*

The Due Diligence Officer:

- a) supports and advises the management level in the implementation of due diligence legislation and the design of the related internal organization, without relieving it of responsibility;
- b) prepares the internal directives (Art. 31);
- c) plans and monitors the internal training and continuing education of employees who perform activities relevant to the duty of care (Art. 32); and
- d) shall prepare a report on its activities in the past year by the end of March and forward it to the management level and the investigator. This activity report shall be submitted to the FMA upon its request.

Art. 35

*Tasks of the investigator*

- 1) The investigator shall ensure compliance with the Act, this Ver-

## Due Diligence Ordinance (DDA)

---

and the internal directives. To this end, it shall carry out internal controls. In particular, it must check whether:

- a) the required documents are properly prepared and retained;
  - b) the documents according to letter a indicate that the due diligence obligations are being fulfilled;
  - c) any duty to notify has been duly fulfilled;
  - d) any requests from competent domestic authorities can be fully complied with within a reasonable period of time;
  - e) the internal organization pursuant to Art. 21 paras. 1 and 2 of the Act has been established in accordance with the circumstances and the individual risks;
  - f) appropriate screening measures are applied when hiring new employees (Art. 31 para. 2 let. k); and
  - g) the training and continuing education of employees who perform activities relevant to the duty of care has been duly performed.
- 2) The investigator shall prepare a report on the audit of the past year by the end of March. In particular, the report shall contain information on the effectiveness of the system for combating money laundering, organized crime and terrorist financing. It shall be forwarded to the management level and to the due diligence officer and shall be submitted to the FMA upon request.

### Art. 36

#### *Special provisions for due diligence officers, investigators and members of the management level*

- 1) The due diligence officer, the investigating officer and the member of the management level responsible pursuant to Art. 22 Para. 1 of the Act must have in-depth knowledge of issues relating to the prevention and combating of money laundering, predicate offenses to money laundering, organized crime and terrorist financing, and of data protection law, and must be familiar with current developments in these areas.
- 2) The responsible member of the management level shall be provided with sufficient authority.
- 3) The duties of the due diligence officer and the investigator may also be assigned to appropriately qualified internal or external persons or specialist units.

- 4) Due diligence officers and investigators remain responsible for the proper performance of their functions even if their duties are delegated.
- 5) The Supervisory Authority shall be notified immediately of the appointment and change of the functionaries referred to in paragraph 1.

#### V. Supervision

##### A. Risk-based supervision

###### Art. 37

###### *Risk profile*

1) When drawing up the risk profile in accordance with Art. 23a Para. 2 of the Act, the supervisory authority must take into account the following factors in particular, whereby the overall view of all factors is decisive for the risk assessment in each case:

- a) products and services offered by the person subject to due diligence;
- b) Size of the duty of care in relation to the:
  1. The number of employees engaged in activities that are subject to due diligence; and
  2. Number of business relations (balance, new and terminated) according to Art. 2 par. 1 let. c of the Law;
- c) Number of business relationships with simplified due diligence requirements under Art. 10 of the Act, including information on the nature of the lower risks;
- c) Number of business relationships with regular due diligence;
- d) Number of business relationships with enhanced due diligence requirements under Art. 11 of the Act, including information on the nature of the enhanced risks;
- e) Nationality and number of politically exposed persons pursuant to Art. 2 para. 1 let. h and Art. 11 para. 4 of the Act with whom business relations are maintained;
- f) Number of business relationships in which the members of the governing body were determined to be beneficial owners pursuant to Art. 3 (1) (a) (2);
- g) Number of business relations according to Art. 35a of the Act and amount of assets involved;

## Due Diligence Ordinance (DDA)

---

h) Results of past inspections according to Art. 24 and 25 of the Law, in particular taking into account:

1. the design of risk-adequate monitoring in accordance with Art. 9 of the Act;
2. the risk assessment of the due diligence officer in accordance with Art. 9a of the Act;
3. the design of the internal organization in accordance with Articles 21 and 22 of the Law;
4. the type and number of determinations and measures to restore the lawful condition pursuant to Art. 40; and
5. the reports pursuant to Art. 34 and 35 on the activities of the due diligence officer and investigator;

i) Supervisory measures pursuant to Art. 28 of the Law;

k) Misdemeanors and infractions under Art. 30 of the Law;

l) Administrative offenses under Art. 31 of the Law;

m) Industry risk, which is defined by the national risk analysis according to Art. 29c of the Law.

2) In the case of banks and branches of foreign banks, the following factors shall be taken into account in addition to the factors set forth in paragraph 1 above:

a) the respective total volume of cash receipts and payments and non-cash receipts and payments per year, taking into account the domicile or registered office of the contracting party;

b) Residence of the actual contributors or beneficial owners according to Art. 2 (1) (e) of the Law in conjunction with Art. 3 (1) (a) (1) and (b) (1) of this Ordinance;

c) Number and type of business relations according to Art. 13 of the Law;

d) Number of business relations according to Art. 35 of the Law and amount of assets involved;

e) Amount of client assets under management by residence or domicile of the contracting partner; and

f) Number of business relationships with funds and total volume of assets held in them.

3) In the case of persons subject to due diligence pursuant to Art. 3, para. 1, subpara. d of the Act, the following factors must be taken into account in addition to the factors set out in para. 1:

a) Number of single-premium life insurance policies and their share of total premium volume;



- b) Number of life insurance policies with illiquid assets;
  - c) Number of (partial) buybacks per year and their total volume;
  - d) Number of policyholder changes for existing life insurance policies per year; and
  - e) Domicile of natural persons within the meaning of Art. 3 para. 1 let. c.
- 4) In the case of persons subject to due diligence pursuant to Art. 3, para. 1, subpara. k of the Act, the following factors shall be taken into account in addition to the factors under para. 1:
- a) Residence of the effective contributors or beneficial owners according to Art. 2 (1) (e) of the Act in conjunction with Art. 3 (1) (a) (1) and (b) (1) of this Ordinance;
  - b) Number of business relationships with bearer instruments;
  - c) Number of business relationships in which external natural persons or legal entities at the bank level have individual subscription rights or collective subscription rights among themselves; and
  - d) Number of business relationships in which external natural persons or legal entities at board level have individual or collective signatory rights among themselves.
- 5) In the case of persons subject to due diligence pursuant to Art. 3 para. 1 let. l of the Act, the following factors must be taken into account in addition to the factors pursuant to para. 1:
- a) Number of transactions documented in the previous calendar year in accordance with Article 143 (2) of the Gaming Ordinance;
  - b) Number of occasional transactions with simplified due diligence requirements under Article 10 of the Act, including an indication of the nature of the lower risks; and
  - c) Number of occasional transactions with enhanced due diligence requirements under Articles 11 and 11a of the Act and Article 145 of the Gaming Ordinance, including information on the nature of the enhanced risks.
- 6) In the case of agents within the meaning of Art. 3 Para. 2 of the Act of due diligence agents under Art. 3 Para. 1 Letters b and h of the Act, the following factors shall be taken into account in addition to the factors under Para. 1:
- a) Number of business relationships and occasional transactions with unified due diligence obligations according to Art. 10 of the Act, including information on the nature of the lower risks;

## Due Diligence Ordinance (DDA)

---

b) Number of business relationships and occasional transactions with enhanced due diligence requirements under Article 11 of the Act, including information on the nature of the enhanced risks; and

c) the total volume of incoming payments by country of origin and outgoing payments by country of destination.

6a) In the case of due diligence obligations pursuant to Art. 3 Para. 1 Letters r, s and t of the Act, the following data and information shall be taken into account in addition to the factors pursuant to Para. 1:

a) Type and design of VT service;

b) used VT systems and computerized systems according to Art. 21 per year;

c) virtual currencies or tokens used;

d) in the case of business relationships pursuant to Art. 2 (1) (c) of the Act: the number and respective volume of transactions per year, taking into account the domicile or registered office of the contracting party and the beneficial owners;

e) in the case of occasional transactions pursuant to Art. 2(1)(c) of the Act: the number and the respective volume of occasional transactions per year, taking into account the domicile or registered office of the contracting party as well as the beneficial owners;

f) Number of VT keys held in custody and total volume of assets for which, on the basis of the VT key held in custody, the ver-

the contracting partner's domicile or registered office, as well as the beneficially entitled persons; and

g) Number of VT tokens held in custody, including the corresponding total value, per year, taking into account the domicile or registered office of the contracting party and the beneficial owners.

7) In the case of due diligence obligations under Article 3 paragraph 3 of the Act, the number of business relationships (balance, new and terminated) under Article 2 paragraph 1 letter c of the Act and the number of occasional transactions under Article 2 paragraph 1 letter d and Article 5 paragraph 2 letters b, e and g of the Act must be taken into account.

8) The supervisory authority may use already existing data and information on due diligence agents for the preparation of the risk profile.

9) It must reassess and document the risk profile on a regular basis and in the event of events of particular significance.

10) It shall provide the commissioned auditors, auditing companies and special statutory auditors with the information relevant to the performance of the controls in accordance with paras. 1 to 7 in good time.

11) The FMA shall regulate the details in a notice.

Art. 37a

*Risk-based ordinary controls*

1) Ordinary controls by the auditors and auditing firms appointed by the supervisory authority must be carried out on a risk basis.

2) Retrieved

3) The frequency of the regular inspections to be carried out by the supervisory authority shall be based on the risk of the person subject to due diligence pursuant to Art. 37. The supervisory authority shall determine its annual inspection plan for the regular inspections depending on the individual risk of the person subject to due diligence.

4) The scope of the ordinary checks pursuant to paras. 1 and 3 shall be based on the risk of the person subject to due diligence.

5) The supervisory authority may set priorities for the performance of ordinary inspections.

6) The supervisory authority may regulate the details in a directive.

Art. 37b

*Obligation to report and notify*

1) For the purpose of implementing risk-based supervision, the due diligence agents shall annually submit the data and information pursuant to Art. 37 par. 1 letters a to g and par. 2 to 7 as follows:

a) the FMA via an electronic reporting system provided by the FMA;

b) the Bar Association using a notification form provided by the Bar Association.

2) Persons subject to due diligence pursuant to Art. 3 Para. 3 of the Act shall report the data and information pursuant to Art. 37 Para. 7 in accordance with the following provisions:

a) The reporting period covers the previous calendar year.

b) If no business relationships have been managed and no transactions have been executed in a calendar year, a zero report must be submitted.

c) The supervisory authority may require due diligence providers to provide further information in accordance with Art. 37 paras. 1 and 4 of the Act.

3) The report pursuant to paragraph 1 must be submitted by March 31 of each year. The report shall contain the data as of December 31 of the respective previous year.

4) In individual cases, the supervisory authority may adjust the frequency of the reports pursuant to para. 1 on an individual basis. Such an adjustment shall only be considered if the risk of a person subject to due diligence is significantly higher or lower than the industry risk.

5) If persons subject to due diligence pursuant to Art. 3 par. 3 of the Act who hold a corresponding business license terminate their activities, they shall notify the FMA thereof in writing without delay.

## B. Controls

### Art. 38

#### *Basics of the controls*

The basis for the inspections pursuant to Articles 24 and 25 of the Act are in particular:

- a) the due diligence acts according to Art. 20 of the Act;
- b) the report of the due diligence officer and the investigator pursuant to Art. 34 let. d and Art. 35 para. 2;
- c) the internal directives pursuant to Art. 21 par. 1 of the Act;
- d) the risk assessment pursuant to Art. 9a of the Act; and
- e) the list of active business relationships netted during the audit period, showing the respective risk allocation.

### Art. 39

#### *Formal and material controls*

1) Formal inspections include checking whether the data and documents required by law are available in full. This is a regularity check, with which the documentation and storage obligations according to Art. 20 of the law are checked.

2) The material control comprises the assessment of the content of the due diligence measures taken. It is thus a plausibility and system check. In particular, it must be assessed whether:

- a) appropriate organizational measures have been taken in accordance with Art. 21 of the Act;
- b) the due diligence obligations under the Act and this Ordinance have been complied with in terms of content, in particular whether the data and reports contained in the due diligence files can be plausibly derived;
- c) the obligation to notify pursuant to Art. 17 para. 1 of the Act has been complied with in the light of the results of the clarifications made;
- d) there may be circumstances which call into question the guarantee of proper business activity and flawless management within the meaning of the law;
- e) the risk assessment complies with the requirements of Art. 9a paras. 1 to 4 and 6 of the Act;
- f) the internal control and monitoring measures pursuant to Art. 9a (5) of the Act are suitable and effectively implemented;
- g) the simplified and enhanced due diligence requirements comply with the requirements under Articles 10 and 11 of the Act.

Art. 40

*Control Report*

- 1) The control report shall contain at least:
  - a) Information about findings;
  - b) Retrieved
- c) the measures ordered to restore the legal status.
  - d) Retrieved
- 2) Retrieved

Art. 41

*Storage*

- 1) The working papers drawn up in the course of the inspection and all related documents and data carriers must be kept in the country in such a way that requests from competent domestic authorities can be complied with within a reasonable period of time.
- 2) The working papers, documents and data carriers shall be kept for ten years after the completion of the respective inspections.

## Due Diligence Ordinance (DDA)

---

### C. Appointed auditors, auditing firms and special statutory auditors

#### Art. 42

##### *Requirements*

- 1) Proof of participation in external training and further education courses in accordance with Art. 26 Para. 1 Letter c of the Act must be provided for at least half a day per calendar year. Knowledge in accordance with Art. 32 letters a, b, d and e must be imparted.
- 2) The auditing company or the special statutory auditing body shall designate one or more auditors who shall be primarily responsible for carrying out the audit.
- 3) Auditors pursuant to par. 2 must have the necessary knowledge to carry out inspections and must be approved by the FMA. The FMA shall regulate the details of the required knowledge in a notice.

#### VI. Final provisions Art. 43

##### *Repeal of previous law*

It is repealed:

- a) Ordinance of January 11, 2005 on the Due Diligence Act (Due Diligence Ordinance, DDA), LGBl. 2005 No. 6;
- b) Announcement of 22 February 2005 on the correction of the Provincial Law Gazette 2005 No. 6, LGBl. 2005 No. 47.

#### Art. 44

##### *Entry into force*

This Ordinance shall enter into force simultaneously with the Due Diligence Act of

#### Appendix 1

(Art. 3 par. 3 and 11a par. 2)

Forms for determining the beneficial owners pursuant to Art. 3 (1) (a) and (b) of the SNI

A. Form for determining the ultimate beneficial owner of legal entities pursuant to Art. 3 (1) (a) DDA (Form C)

Legal entity or account holder: Mandate or account number:

The beneficial owner pursuant to Art. 3 (1) (a) DDA was determined to be:

- a natural person who ultimately holds or controls, directly or indirectly, an interest or voting rights of 25% or more in such entity or has an interest of 25% or more in the profits of such entity
- a natural person who ultimately exercises control over this legal entity in another way
- a natural person who is a member of the governing body, if none of the aforementioned persons has been identified after exhausting all possibilities and provided that there is no suspicion

Last Name First Name Date of Birth Nationality Residential Address Zip Code/City State of Residence City/Date:

For the contractor:

Name(s) of the person(s) signing:

The intentional provision of false information in this form is a punishable offense under the Liechtenstein Criminal Code. Any changes must be reported immediately to the person required to exercise due diligence. In the event that a member of the governing body is determined to be a beneficial owner, it is confirmed by signature that the clarifications made have not brought to light any circumstances which would indicate the existence of beneficial owners, in particular through the indirect holding of shares, voting or profit rights or through control in any other way.

B. Form for determining the ultimate beneficial owner of legal entities pursuant to Art. 3 (1) (b) DDA (Form T)

Legal entity or account holder:

.....

Mandate or account number:

.....

The beneficial owner pursuant to Art. 3 (1) (b) DDA was determined to be:

- a natural person who is an effective, non-fiduciary founder, founder or settlor, respectively
- a natural person or legal entity who is a member of the foundation's board of directors or board of trustees or a trustee.



## Due Diligence Ordinance (DDA)

---

- a natural person who is a protector or a person in a similar or equivalent function
- a natural person who is a beneficiary
- a natural person who ultimately controls the legal entity through direct or indirect ownership or otherwise
- a legal entity that is the beneficiary and meets the requirements of Art. 2 (1) (b) DDA. The corresponding proof must be provided by the contractual partner.

Name of natural person / company name of legal entity First name\*

Date of birth/date of incorporation

Nationality\* Residence address/domicile address Postcode/city State of residence/domicile country

- Discretionary legal entity established or operated primarily in the interest of the following group of persons:

Place/Date:

For the contractor:

Name(s) of the person(s) signing:

The indication of a legal entity is only sufficient in case of:

- a legal entity that is a member of the foundation or administrative board or a trust beneficiary;
- Beneficiaries for which the contracting party provides evidence that it is a legal entity within the meaning of Art. 2 para. 1 let. b DDA.

The fields marked with \* are only to be filled in for natural persons.

The intentional provision of false information in this form is a punishable offense under the Liechtenstein Criminal Code. Any changes must be notified immediately to the person obliged to exercise due diligence.

### Annex 2

(Art. 11a para. 3)

Form for documentation of distribution recipients in the case of discretionary dis-legal entities according to Art. 7a of the DDA (Form D)

Distributing entity or account holder: mandate or account number:

- Distribution to a natural person or to a legal entity\* that has the



Requirements according to Art. 2 para. 1 let. b DDA not fulfilled.

The following natural person was determined to be the recipient of the distribution:

Last name First name Date of birth Nationality Residential address Zip code/City  
Country of residence

Distribution to a legal entity with exclusively non-profit or charitable purposes within the meaning of Art. 2 (1) (b) DDA, the fulfillment of which promotes the general public and which is demonstrably exempt from income tax in its country of domicile. Proof must be provided by the contractual partner.

The following legal entity within the meaning of Article 2 (1) (b) of the DDA was determined to be the recipient of the distribution:

Company name of the legal entity

Postcode/city Country of domicile

Currency and amount of distribution:

year in which the distribution is made:

Place/Date:

For the contractor:

Name(s) of the person(s) signing:

The intentional provision of false information in this form is a punishable offense under the Liechtenstein Criminal Code. Any changes must be notified to the person obliged to exercise due diligence without delay.

\* The natural persons who are deemed to be beneficial owners of the legal entity pursuant to Art. 3 of the DDA must be listed.

### Annex 3

(Art. 26 par. 4)

Evidence of money laundering, organized crime and terrorist financing

I. Significance of the clues

The indications listed below are general indicators of money laundering, organized crime or terrorist financing. Against this background, the classification into categories II to VI is only made in the sense of practical experience and does not emphasize the exclusive relevance for the category in which a clue occurs. The purpose of this listing

is to support the due diligence officers in their activities and to give them indications as to which circumstances or behaviors should trigger clarifications within the meaning of the law. The aim of this assistance is therefore not the identification of indications, but the targeted and risk-based performance of special clarifications within the framework of due diligence obligations. Even a single clue can therefore trigger a suspicion, which results in a duty to notify under Art. 17 para. 1 of the Act, if no plausibility of the facts can be achieved within the framework of the special clarifications carried out. As a rule, however, the coincidence of several criteria or the lack of plausible explanations should give rise to a suspicion of money laundering, predicate offenses to money laundering, organized crime or terrorist financing and thus trigger the duty to report.

Blanket declarations by the customer (contractual partner or beneficial owner) about the background of transactions requiring clarification are not sufficient. It is essential that not every declaration made by the customer can be accepted unquestioningly. The person subject to due diligence must check the plausibility of every declaration made by a customer within the scope of his possibilities. If the plausibility of the transaction can be verified and no suspicious facts have arisen, this must be documented accordingly. For this reason, the following list does not contain any mitigating elements. The recognition of such factors is the subject of the investigations triggered by them. If the clarifications show that the transactions or circumstances are relevant for the due diligence obligation, the

If the information provided is not plausible, a suspicion of money laundering, a predicate offense to money laundering, organized crime or terrorist financing cannot be completely ruled out, which leads to a duty of notification under Art. 17 Para. 1 of the Act.

The following list of indications is intended as a support for the identification of indicators and is not exhaustive. This means that, in the context of exercising due diligence, indications not listed in the present annex must also trigger the performance of special clarifications. Nor would it be permissible, in the sense of the above, to interpret this as meaning that several indications must be identified in order to trigger the obligation to submit a notification within the meaning of Art. 17(1) of the Act.

### II. General indications

1. Transactions in which assets are withdrawn shortly after they are received by the custodian (pass-through accounts and transactions).
2. Transactions or structures where it is not comprehensible why the customer has chosen this particular due diligence agent or this branch for his business.
3. Transactions that cause an account that was previously largely inactive to suddenly become very active.
4. Transactions or structures that cannot be reconciled with the due diligence person's experience of the customer and the purpose of the business relationship.
5. Transactions or structures that are not economically plausible or lack the counterparty's interest in the overhead of conducting the transaction.
6. Lack of cooperation of the customer in establishing and verifying the identity of the contracting party or the beneficial owner in accordance with Art. 5(2) of the Act.
7. Unexpected or frequent change of the beneficial owner.
8. Unexpected change of the duty of care.
9. Unexpected or frequent change in customer accessibility.
10. Customer intentionally provides false or misleading information or refuses to provide the information and documents necessary for the business relationship and customary for the activity in question.
11. Customer receives remittances from or initiates remittances to a country known to have high levels of criminality (e.g., widespread corruption, terrorism, and large-scale drug production).
12. Attempt by the customer to place the person subject to due diligence in a relationship of dependence.
13. Obvious disproportion between performance and consideration and purchase of assets by transfer of obviously inferior assets.
14. Attempt by the customer to manifestly avoid or refuse the personal contact sought by the due diligence officer.

## Due Diligence Ordinance (DDA)

---

15. Business relationships with legal entities that are not registered in publicly maintained registers or databases and from which no equivalent confirmations within the meaning of Art. 8 (2) DDA can be obtained.

16. During personal meetings, the customer is always accompanied by other persons whose function is not obvious and who play a role in shaping the business relationship.

17. Providing contact information by customers that does not match the contact information (address, telephone number) of the customer at his permanent place of residence.

18. Large project deals where the majority of financing is to be secured from unspecified investors.

19. Customer with discretionary needs that go beyond what is customary in the industry.

20. The customer's wish to close accounts without a paper trail and to open new accounts in his name, in the name of his family members or in the name of persons otherwise known to be close to him.

21. Customer's request for receipts for cash withdrawals or deliveries of securities which in fact were not made or for which the assets were immediately redeposited with the same institution.

22. Customer's request to execute payment orders indicating an incorrect payer.

23. Customer's request that certain payments are not made through his accounts, but through Nostro accounts of the person obliged to pay due diligence or through accounts Pro-Diverse.

24. The customer's wish to accept or report credit cover that does not correspond to the economic reality or to grant fiduciary loans by reporting fictitious cover.

25. Indications of judicially punishable acts of the customer in the country or abroad.

26. Customer presents suspiciously new identification documents (e.g. if the date of issue of a document does not seem to match its external condition).

### III. Specific clues

#### A. Spot transactions

1. Changing a large amount of banknotes (foreign and domestic) with a small denomination into those with a large denomination.
2. Exchanging money in a substantial amount without posting it to a customer's account.
3. Cashing of larger amounts by means of checks including traveler's checks.
4. Purchase or sale of larger quantities of precious metals by walk-in customers.
5. Purchase of bank checks in substantial volume by walk-in customers.
6. Transfer orders abroad by walk-in customers without any legitimate reason being apparent.
7. Multiple conclusion of spot transactions just below the threshold values.
8. Acquisition of bearer shares by means of physical delivery.

B. Bank accounts and deposits

1. Frequent withdrawals of large amounts of cash or cash deposits without any reason being found in the customer's business, economic or private activities.
2. Recourse to means of financing which, although common in international trade, their use is inconsistent with the known activity of the customer.
3. Economically nonsensical structure of a customer's business relations with the bank (large number of accounts at the same institution, frequent shifts between different accounts, excessive liquidities, etc.).
4. Granting of collateral by third parties who do not have a recognizably close relationship with the customer.
5. Attempt by the customer to make transfers to another bank with incomplete information on the ordering party or recipient.
6. Accepting transfers from other banks without specifying the name or number of the beneficiary's or ordering party's account.
7. Repeated large-scale transfers abroad with the instruction that the amount be paid to the recipient in cash.
8. Granting of collateral for non-market loans among third parties.
9. Cash deposits made by a large number of different individuals to a single

Account.

10. Unexpected repayment of a non-performing loan.
11. Use of pseudonym or numbered accounts for processing commercial transactions of trade, commercial or industrial enterprises.
12. Withdrawal of assets shortly after they have been credited to the account (flow-through account).
13. Account opening using similar names of other companies for the purpose of misleading.
14. Customer's request to set up several accounts with different master numbers without a plausible reason.
15. Customer conspicuously presses for immediate execution of an unusual transaction.

C. Fiduciary business

1. Trust loans (back-to-back loans) without an identifiable, legally permissible purpose.
2. Fiduciary holding of participations in non-listed operating companies into whose activities the due diligence officer is denied insight.
3. Individual subscription rights together with the duty of care within the company structure or on company accounts.
4. Cost minimization by means of complicated structures, whose overheads compensate for the intended advantage.
5. Fiduciary real estate transactions that are obviously below or above the market value of the property.

D. Insurance business

1. A business relationship shall be entered into with entities in which no particular person is the beneficial owner.
2. Contractual partner requires an individual guarantee declaration in addition to the insurance policy.
3. The policyholder inquires about unusual payment options (cash payment, payment to an account abroad) that cannot be explained by his/her circumstances (e.g. change of residence abroad).
4. Granting a power of attorney without a plausible reason to a person who is not in

has a sufficiently close relationship with the Contracting Party.

5. Issuing an instruction to pay the sum insured to the beneficiary in cash.
6. Conclusion of several contracts at short intervals without plausible reason.
7. Customer pushes for particularly fast conclusion of a contract with high amounts.
8. Customer inquires in advance about the possibilities of cash payment for the premium of an insurance contract or the possibilities of paying insurance premiums via foreign accounts.
9. Non-plausible interest of the policyholder in the option of early termination or payout.
10. Change of specified payment methods.
11. Overpaid premiums followed by a request for repayment to third parties or abroad.
12. Using a variety of sources to pay premiums.
13. Significant premium increases for a policy.

#### E. VT Services

1. Transactions are carried out with the inclusion of techniques that result in increased anonymity.
2. Transactions with tokens whose exchange can only be carried out in very few places or exclusively internally.
3. Structuring transactions so that they remain below the thresholds.
4. Execution of multiple transactions within a short period of time.
5. Execution of several transactions with large volume within one month.
6. Immediate referral of assets to various other VT service providers located in states with strategic deficiencies.
7. Parking of assets in accounts with trading platforms and the withdrawal again without interim trading.

8. Perform multiple back-and-forth transactions involving the same VT identifiers.
9. Conducting transactions to and from peer-to-peer service providers.
10. Use of cold storage wallets for cross-border transactions.
11. Lack of knowledge and/or provision of inaccurate information about the reasons for and the recipient of the transaction and the origin of the assets.
12. Conducting transactions originating from or intended for online money game organizers.
13. Conducting transactions involving VT identifiers that have a connection to known fraud schemes, thefts, or darknet markets.
14. Execution of transactions at two or more VT identifiers, of which one transaction has a large volume and is subsequently transferred in turn to two or more VT identifiers in a continuously divided manner until the transaction volume is exhausted ("peeling chain").
15. Execution of transactions involving VT service providers that are not subject to supervision equivalent to that of the domestic market.
16. High deposit volume when opening a business relationship.
17. Creation of multiple accounts within a short period of time to bypass thresholds.
18. Attempting to create multiple accounts under different names in order to circumvent payment thresholds.
19. Opening business relationships to conduct transactions by individuals for business purposes.
20. Carrying out multiple switching activities for a customer, especially if this results in disproportionate losses for the customer.
21. Customers using a VT service provider platform using DNS registrars that suppress or override domain name ownership.
22. Customers using the VT service provider platform using an IP address associated with anonymity-enhancing software.



23. Frequent change of email addresses, MAC addresses, and other information related to contractor identification and verification.

24. Linking debit or credit cards to wallets or accounts that allow the withdrawal of larger amounts of fiat money.

25. Information on the VT Ordering Party or the VT Beneficiary is not transmitted, is not transmitted in accordance with the regulations, is incomplete or is transmitted late in the case of VT Transfers.

F. Depository and rental business

1. Rental of safe deposit boxes and safes by foreign representatives of professional groups, such as lawyers and trustees, especially if several safe deposit boxes and/or safes are rented on their behalf.

2. The registered office or place of residence of a contracting party or a beneficial owner is located in a country affected by a sanctions order under the Act on the Enforcement of International Sanctions.

3. A contracting party or a beneficial owner has the nationality of a country affected by a sanctions order under the Law on the Enforcement of International Sanctions.

4. Storage of precious metals that have no or a coinage of persons or companies that unlicensed and commercially produce products from precious metals or that are related to states with strategic deficiencies.

5. A contracting party, a beneficial owner or an authorized representative exhibits conspicuous behavior when accessing premises or containers for the safekeeping of valuables, such as bonded or valuables warehouses, safe-deposit boxes, safes or vaults (e.g., not identified or unidentifiable escorts or large increases in the number of accesses).

6. A short custody period that is contrary to the information provided by the contracting party or does not correspond to the business profile.

7. Attempted access by a beneficial owner to the premises or containers for the storage of valuables without being authorized to do so by the contracting party.

8. Frequent change of the contracting party or relocation of the stored or deposited items with simultaneous change of the contracting party.

## Due Diligence Ordinance (DDA)

---

9. Transfer of assets from custody or storage to foreign group companies without physical delivery.

10. Transfer of ownership or power of attorney of existing contracts for safekeeping or storage of items to unrelated third parties.

11. Collection of the items held in custody or storage by a person other than the contracting party who has been authorized only for this collection, with the exception of transport companies acting in the name and on behalf of the contracting party.

### IV. Evidence of terrorist financing

1. Persons, companies or organizations involved in the business relationship are affected by a sanctions order under the Law on the Enforcement of International Sanctions or have been known, charged or convicted in connection with terrorist activities or their financing.

2. Transactions in which alleged or unknown humanitarian organizations are involved.

3. Frequent change of authorized party (contractual partner, beneficial owner, etc.).

4. Frequent change of account powers of attorney in favor of third parties.

5. Frequent changes of residence, telephone number, authorized representative, or unregularly high inputs and outputs.

6. Indications of links to known fundamentalist individuals or organizations or institutions.

7. Evidence of support for fundamentalist publications or actions.

8. Persons involved in the business relationship are presumed or known to be so-called "Foreign Terrorist Fighters" (FTFs), who actively participate in combat operations outside their home country.

9. The customer shows behavior that suggests radical or extremist ideas (e.g. refusal to communicate or negotiate with female employees or those of a different skin color).

10. The customer opens several accounts through which a large number of smaller cash payments are received.

11. The customer recognizably gains access to his e-banking account by means of an IP address from a crisis area.
12. Longer absences abroad of unemployed persons/customers, while there are still continuous cash receipts from (various) persons on the account.
13. There are indications that the customer travels (repeatedly) to crisis regions and carries cash with him or obtains it locally (e.g., via ATMs).
14. Multiple customers with different accounts transfer assets to the same recipient with an account at an institution in a crisis area.
15. The customer transfers assets in cash or by bank transaction to several recipients in crisis areas.
16. Deposits from various parties to an account are withdrawn promptly in cash, e.g. via ATMs in crisis areas.
17. The customer donates own assets or received benefits using his account or debit or credit cards to non-profit organizations or operators of religious websites that propagate radicalism, extremism or violence.
18. The customer takes out (life) insurance or takes out loans before traveling to crisis areas, using persons other than himself as beneficiaries.
19. The customer obtains cash in crisis areas by debit or credit card.
20. Sudden use of debit or credit cards in crisis areas after months of not using them.
21. The customer applies for an account opening and intends to deposit cash in non-convertible currencies (e.g. from crisis areas).
22. A non-profit organization uses assets for purposes that are manifestly not in line with its purpose and are suitable for terrorism financing.

#### V. Indications for tax offences

1. Untraceable, substantial transactions not in line with the business profile in connection with the customer's business activities.
2. Payment or receipt of remuneration (e.g. fees) to or from companies

without commercial activity or without substance or connection between the counterparties, the purpose of which is economically unjustified refactoring (re-invoicing).

3. Termination of business relationships for which AIA reporting is imminent and/or reinvestment of the relevant assets in products/structures aimed at avoiding AIA reporting.

4. Discrepancies are found in documents that serve to check the plausibility of atypical or unusual transactions, in particular if an invoice document does not contain the form requirements for invoices from the country in question (e.g. no VAT identification number, no invoice number, no address).

5. A legal entity is classified as an "Active Non-Financial Entity", but information/documents for the plausibility of this classification according to the requirements of the AEOI Act and the AEOI Information Sheet of the Tax Administration are missing.

6. A contracting party requires cooperation in or provision of services that may promote a tax offense (e.g., requesting anonymized vouchers or requesting that various items be omitted from vouchers).

7. A contractual partner requires "bank-stored correspondence" as the only shipping method for no plausible reason.

8. There is contradictory or inconclusive information about the tax residency of the client in accordance with the requirements of the AEOI Act and the AEOI information sheet of the tax authorities.

9. The due diligence party is aware of criminal tax proceedings or pending administrative assistance proceedings in tax matters against the contracting party.

10. The due diligence officer becomes aware of efforts that have been started, but apparently not completed, in connection with cleaning up the client's tax situation.

#### VI. Evidence of corruption

1. Payments in connection with government orders or orders from government-owned companies are processed through offshore companies.

2. Unusually high commission payments or payments for social entertainment and/or gifts.

3. Payments in connection with large government contracts awarded without a transparent tendering process.
4. Payments are in a recognizable disproportion to the delivered products/services.
5. There is no or insufficient documentation of contracts or they are recognizably not granted at market conditions.
6. Loans are granted without contracts or these contracts lack important components.
7. No action is taken by creditors in the event of non-repayment of loans.

Appendix 4

(Art. 23a)

States with strategic deficiencies

States with strategic deficiencies are:

1. Afghanistan
2. Barbados
3. Burkina Faso
4. Cayman Islands
5. Democratic People's Republic of Korea (DPRK)
6. Haiti
7. Iran
8. Jamaica
9. Yemen
10. Jordan
11. Cambodia
12. Mali
13. Morocco
14. Myanmar (Burma)
15. Nicaragua
16. Pakistan

## Due Diligence Ordinance (DDA)

---

17. Panama
18. Philippines
19. Senegal
20. Zimbabwe
21. South Sudan
22. Syria
23. Trinidad and Tobago
24. Uganda
25. Vanuatu



