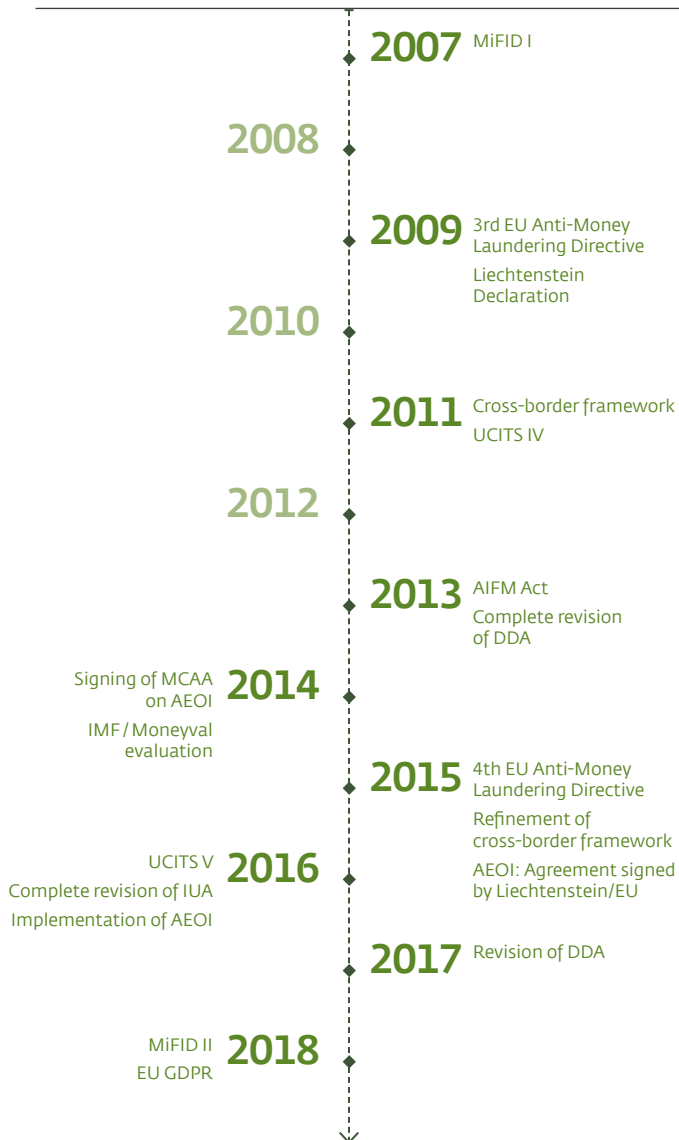


# Regulatory framework and developments

**W**ith the implementation of the Automatic Exchange of Information, Liechtenstein is one of the so-called Early Adopters of a comprehensive cooperation in international tax matters. The country and the financial centre stand for access to markets and for legal certainty.

## Implementation of regulatory frameworks 2007–2018



## Financial centre strategy

Liechtenstein has decided to adopt a financial centre strategy that is based on client tax compliance. The Government Declaration of 14 November 2013 signalled the country's strong commitment towards its tax compliance strategy heralded by the Liechtenstein Declaration of 12 March 2009. Liechtenstein is also implementing the US Foreign Account Tax Compliance Act by passing the FATCA Law. At the same time, it is signed up to the Automatic Exchange of Information (AEOI) in tax matters and the applicable standards of the Organisation for Economic Co-operation and Development (OECD).

In 2016, the Liechtenstein Bankers Association published its strategy for the Liechtenstein banking and financial centre entitled "Roadmap 2020". Its long-term focus is on quality, stability and sustainability. Furthermore, the banks and the Bankers Association expressly and actively support the financial centre's tax compliance strategy.

## International tax topics

### Automatic exchange of information (AEOI)

Liechtenstein was among the so-called Early Adopter Countries that signed the multilateral agreement on the automatic exchange of information, the so-called Multilateral Competent Authority Agreement (MCAA), on 29 October 2014. To date, 102 countries and financial centres have signed up to the AEOI. On 22 August 2016, Liechtenstein took another important step towards the implementation of its financial centre and tax strategy. The Government deposited its instrument of ratification for the Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters (MAC) at the OECD in Paris.

### Exchange of data in 2017/2018

The first exchange of bank data with EU countries (excluding Austria) occurred in 2017 for the 2016 fiscal year. The MAC, which is a comprehensive multilateral instrument for tax matters, has been in force since 1 December 2016. On the basis of this agreement, the Automatic Exchange of Information has been implemented with 32 other states since 2017. Another 27 states will be added from 2018.

### **AEOI in Switzerland**

In 2017, Swiss banks collected tax data which from 2018 will be exchanged with the EU member states and nine other states. From 2018, Switzerland will implement the Automatic Exchange of Information in tax matters with 41 other partner countries – including Liechtenstein.

### **Double taxation agreements and tax information exchange agreements**

Bilateral, long-term cooperation agreements form the basis of Liechtenstein's financial centre policy. By the end of 2017, tax information exchange agreements (TIEAs) were concluded with 36 countries and double taxation agreements (DTAs) with 17 countries.

#### **• Liechtenstein / Switzerland**

The new double taxation agreement between Liechtenstein and Switzerland has been applied since 2017. The two countries signed the DTA on 10 July 2015 and it came into force on 22 December 2016. It is a comprehensive agreement which is based upon OECD recommendations and avoids the double taxation of income and capital. It replaces the agreement of 22 June 1995 between Switzerland and Liechtenstein on various tax issues, which only governed the taxation of certain income.

The new DTA also includes the taxation of AHV pensions. These can be taxed solely in the state of residence. The respective country of domicile will continue to retain the right of taxation in the case of cross-border commuters. Benefits from occupational pensions are subject to taxation in the recipient's country of domicile. The taxation of dividends, interest and royalty payments is now also governed by this new agreement.

#### **• Liechtenstein / Austria**

In 2017, Austria exchanged tax information on new clients for the first time on the basis of the AEOI agreement. Data collection started in October 2016 and an extended exchange to include existing clients will take place in September 2018.

To avoid duplication with the AEOI agreement, Liechtenstein and Austria signed on 17 October 2016 a Protocol of Amendment to the withholding tax agreement applicable since 2014. Both countries thereby agreed upon the partial continuation of the withholding tax agreement which includes provisions on non-transparent asset structures and existing transparent asset structures as at 31 December 2016. All other accounts and custody accounts fall under the AEOI agreement with the EU in future.

### **FATCA**

The Liechtenstein FATCA Law ensures that Liechtenstein's financial institutions can operate in the US capital market. On 16 May 2014, Liechtenstein and the USA hence concluded an agreement (Intergovernmental Agreement according to model 1) on the implementation of the Foreign Account Tax Compliance Act (FATCA). This US Act obliges financial institutions worldwide to identify their US clients and to

disclose their assets and revenues to the Internal Revenue Service (IRS) of the United States. The information goes beyond the applicable provisions of the Qualified Intermediary (QI) regime.

### **Cross-border banking**

The LLB Group concentrates its international activities on selected strategically and economically significant markets. The aim thereby is to limit the regulatory risks that exist in cross-border financial services. Our focus lies on the onshore markets of Liechtenstein, Switzerland and Austria, the traditional cross-border markets of Germany and the rest of Western Europe as well as on the growth markets of Central and Eastern Europe and the Middle East.

The LLB Group's internal rulings ensure that employees know and comply with the regulations of the respective target country when engaging in cross-border activities. Again in 2017, training courses were conducted for client advisers in the particular markets relevant to them.

### **Data protection**

The ever more stringent legal requirements provide clear guidelines for data protection. Data protection is central for the LLB Group. In 2017, the Group Information Security Department received no alerts from the persons responsible for data security in the Group companies. We are bound by the laws and the regulatory guidelines in Liechtenstein, Switzerland and Austria, as well as the specific requirements and circumstances in our target markets.

#### **Liechtenstein / Switzerland**

The LLB Group implemented in 2016 the latest Swiss standards on dealing with risks associated with electronic client data. Switzerland is currently working on a revision of its Data Protection Act, which should bring it into line with the EU General Data Protection Regulation (EU GDPR)

#### **EU General Data Protection Regulation**

The EU General Data Protection Regulation entered into force in the European Union on 24 May 2016. It harmonises the rules on the recording and processing of personal data by companies and public authorities across the EU. It aims to ensure the protection of data and guarantee the free movement of data within the EU. After a two-year transition period, the Regulation will be binding throughout the European Union from 25 May 2018. The GDPR establishes a uniform legal basis for data protection across the EU for the first time.

The content of the Regulation brings various significant changes: New is the "right to be forgotten", under which a person can have the data controller erase their data from the web. New is also the "one-stop-shop mechanism", under which a person can notify directly the

data protection authorities in their member state of any data breaches, regardless of where the breach occurred.

The Regulation also provides in part for stricter rules on key aspects of the data protection law: for instance, informing a person about the processing of their data, making contractual arrangements for the processing of data by third parties and transferring personal data to third countries.

The EEA is currently in the process of taking over the GDPR. As an EEA member, Liechtenstein has therefore initiated a complete revision of its Data Protection Act. The LLB Group has established rules which are applicable throughout the company and started to implement the necessary organisational and technical adjustments

## Rules of conduct

We expect our corporate bodies and employees to comply with the applicable laws, regulations and guidelines, professional standards and our rules of conduct. The rules of conduct stipulate which transactions in financial instruments are not permitted for employees and corporate bodies and also set out the general principles for employee transactions for own account. How business relationships are supported by employees and corporate bodies is also clearly regulated, as is the acceptance of inducements and the exercise of secondary employment.

## Regulatory environment

### Protection against money laundering

The fight against money laundering and terrorist financing has been a top priority for years for Liechtenstein, which has a zero-tolerance policy towards such matters. As a member of the EEA, Liechtenstein implemented in 2017 the 4th EU Anti-Money Laundering Directive 2015 / 849 as well as Regulation 2015 / 847 on information accompanying transfers of funds.

The relevant implementing provisions are found especially in the Law on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing (Due Diligence Act; DDA) of 1 September 2017 and the corresponding Ordinance (Due Diligence Ordinance; DDO).

In 2002, 2007 and 2013/2014, the International Monetary Fund (IMF) and Moneyval (the Council of Europe's Committee of Experts) assessed to what extent the Liechtenstein provisions on anti-money laundering and combating the financing of terrorism meet the standards laid down by the Financial Action Task Force (FATF 40+9 Recommendations). In their last report, the IMF and Moneyval attested positively to Liechtenstein's standards in combating money laundering and financing of terrorism.

LLB has assigned the highest priority to combating money laundering and its predicate offences as well as financing of terrorist or criminal activities. Monitoring is performed by an IT system. In addition to

the systematic monitoring of transactions, employees receive ongoing training on regulatory changes. They are also sensitised to the indications of possible money laundering activities.

The Financial Intelligence Unit (FIU) serves as the country's central authority for obtaining and analysing information that is necessary to recognise money laundering, predicate offences for money laundering, organised crime and terrorist financing. It represents Liechtenstein in the Committee of Experts on anti-money laundering and terrorist financing in the EU. The revision of the FIU Law on 1 March 2016 and the adaptations made to the Due Diligence Act ensure Liechtenstein is fully legally compliant with the international standard.

### MiFID II / Liechtenstein

The Liechtenstein financial centre implemented the Markets in Financial Instruments Directive (MiFID) on 1 November 2007. MiFID simplifies cross-border financial services and allows investment firms, banks and stock markets to also offer their services in other EU / EEA member states. Furthermore, they are required to conduct precise client and product analyses as well as disclose information on compensations and commissions.

The Amendment (MiFID II) and the accompanying Regulation (MiFIR) came into force in the EU on 3 January 2018, one year later than originally planned. They provide for further regulation of the financial markets and investment services. MiFIR also regulates trading transparency. Besides the refinement of regulations since MiFID, the aim of MiFID II is to create greater transparency in the markets and to increase investor protection.

High-frequency trade will be made more transparent and subject to stricter supervisory controls, while position limits on commodity trading will be stricter. In future, throughout the EU, consultations at bank branches and consultations by telephone must record and document in a comprehensive manner why a financial product was recommended and how it matches the client's risk profile.

In Liechtenstein, the implementation of MiFID II required comprehensive changes to the Banking Act and the Asset Management Act, the Banking Ordinance and the Asset Management Ordinance, as well as amendments in particular to the Act on Certain Undertakings for Collective Investment in Transferable Securities (UCITS Act) and the Financial Market Supervision Act (FMA Act). The legislative process has been completed at national level and the amendments came into force on 3 January 2018. LLB implemented MiFID II within the specified time.

### FinSA / Switzerland

Switzerland intends to conceptually reshape the guiding principles of its financial centre in order to transpose investor protection issues arising from MiFID II, in particular, into national law. On 4 November 2015, the Federal Council adopted the dispatch on the Financial Services Act (FinSA) and on the Financial Institutions Act (FinIA). The bills are being debated by Parliament.

The FinSA governs the prerequisites for providing financial services and offering financial instruments. The FinIA makes provision for an activity-based, differentiated supervisory regime for financial institutions requiring authorisation. The FinSA and the FinIA shall serve to provide modern investor protection and are expected to come into force in 2019.

The Financial Market Infrastructure Act (FMIA) and the Financial Market Infrastructure Ordinance (FMIO), which have been in force since 1 January 2016, are also all part of the new Swiss financial market architecture. Consequently, new rules that are consistent with the applicable international standards will apply in Switzerland for financial market infrastructures, such as trading venues and central counterparties, as well as for derivatives trading.

## Access to the EU market

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The Liechtenstein investment fund centre has a legal basis that is focused on clients and investor protection. Investment fund law comprises three pillars: the Act on Certain Undertakings for Collective Investment in Transferable Securities (UCITS Act, 2011), the Law on Alternative Investment Fund Managers (AIFM Act, 2013) and the Investment Undertakings Act (IUA), which was revised in 2016.

### UCITS V

With the transposition of the EU's Directive on Undertakings for Collective Investment in Transferable Securities (UCITS V) into the Act on Certain Undertakings for Collective Investment in Transferable Securities (UCITS Act), traditional funds will be subject to uniform regulation Europe-wide. It places new requirements on custodian banks with regard to liability, control function, custody, independence and sanctions level.

### AIFM

Access to the EU market is central to the competitiveness of both the Liechtenstein financial and investment fund centre. Since the adoption of EU law in the EEA Agreement, Liechtenstein investment companies have been legally entitled not only to administer and sell UCITS funds across national borders, but also to use the EU passport for alternative investment fund managers (AIFMs). The AIFM Directive serves to increase the transparency of the activities of the alternative investment fund managers and the alternative investment funds (AIFs) they manage vis-à-vis investors and the supervisory authorities.

### IUA

The Investment Undertakings Act (IUA) was completely revised in 2016 and applies to four clearly defined domestic investment fund categories. The new investment fund law regulates most notably the fund business model for single investors that was specially set up in Liechtenstein.

## Group Legal & Compliance competence centre

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Group Legal & Compliance has been under the Group CFO Division since 2016. LLB has a traditional legal department, Group Legal, plus three specialised compliance departments:

- Group Financial Crimes Compliance is responsible for fulfilling legal anti-money laundering requirements.
- Group Regulatory Compliance is focused on compliance with supervisory requirements, inter alia, in the areas of MiFID and cross-border.
- Group Tax Compliance is responsible, inter alia, for implementing a tax compliance strategy as well as AEOI and FATCA.

Compliance, according to the regulations governing the conduct of business of Liechtensteinische Landesbank AG of 1 January 2016, means the observance of legal, regulatory and internal regulations as well as of common market standards and codes of conduct. Group Legal & Compliance supports and advises the Group Executive Board regarding the assessment and monitoring of legal and compliance risks. This organisational unit is involved in all the LLB Group's regulatory measures and projects.