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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT ON LIECHTENSTEIN [1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Summary

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[1] Adopted by MONEYVAL at its 24th Plenary meeting (Strasbourg, 10-14 September 2007).

Key Findings

1. The financial sector in Liechtenstein provides primarily wealth-management services, including banking, trust, other fiduciary services, investment management, and life insurance-based products. There has been significant expansion recently in the non-banking areas, particularly investment undertakings and insurance. Approximately 90 percent of Liechtenstein's financial services business is provided to nonresidents, many attracted to Liechtenstein by the availability of discrete and flexible legal structures, strict bank secrecy, and favorable tax arrangements, within a stable and well-regulated environment.

2. By its nature, Liechtenstein's financial sector business creates a particular money laundering risk in response to which the authorities and the financial sector firms have developed risk-based mitigating measures. Minimizing the risk of abuse of corporate vehicles and related financial services products presents an ongoing challenge, as does the identification of the natural persons who are the beneficial owners of the underlying assets or legal persons or arrangements. Therefore, Liechtenstein is vulnerable mainly in the layering phase of money laundering. No particular vulnerability to terrorist financing was identified.

3. Liechtenstein was listed by the FATF as part of its initial review of noncooperative countries and territories in 2000 but was delisted in 2001. The authorities have made significant progress since that time in moving towards compliance with the FATF Recommendations, as noted in the AML/CFT assessment conducted by the IMF in 2002 as part of the Offshore Financial Center (OFC) assessment program and as evidenced by the subsequent major legislative amendments and institutional restructuring.

4. Both ML and FT are criminalized broadly (though not fully) in line with the international standard. There is no criminal liability of corporate entities. The quality of its analysis and output indicates that the financial intelligence unit (FIU) makes effective use of the information it receives. However, the effectiveness of the suspicious activity reporting system could be improved by addressing factors that may be currently suppressing the level of reporting, including, for example, the requirement for automatic freezing of assets for five days following filing.

5. The investigative powers available to the law enforcement authorities are comprehensive enough to enable them to conduct serious investigations in an effective way. However, the number of investigations resulting from the files forwarded by the FIU appears low and there have been just two prosecutions for (autonomous) money laundering and no convictions. Most of the cases in which Liechtenstein has been involved, including some high-profile cases, have links to other jurisdictions and the Liechtenstein prosecutors consider it more effective to refer the cases to those jurisdictions where the main criminal activity is alleged to have taken place and then provide strong support to the resultant prosecution. There have been consequent convictions for money laundering or a predicate offense, though not in Liechtenstein.

6. The AML/CFT law (Due Diligence Act–DDA) was last amended in February 2006 and is elaborated by a 2005 Due Diligence Ordinance (DDO) to provide the main legal basis for the AML/CFT preventive measures. Banks and other financial institutions and relevant DNFBPs are supervised by the Financial Market Authority (FMA), which reports directly to Parliament. However, some doubt remains as to whether the scope of AML/CFT coverage is sufficiently wide to fully meet the FATF Recommendations. The DDA and DDO provide a broad framework for customer due diligence (CDD), though their provisions fall short of the international standard on some substantive issues and a range of technical points. This reflects the fact that, as in many European Economic Area (EEA) member states, Liechtenstein plans to implement the EU Third Money Laundering Directive by 2008, during which process the authorities will have an opportunity to address the identified deficiencies.

7. In Liechtenstein, CDD is based mainly on the obligation to prepare and maintain a customer profile, including beneficial ownership information, source of funds, and purpose of the relationship. Discussions with auditors, who are contracted by the FMA to conduct most of the AML/CFT on-site supervision, indicate that levels of compliance have improved significantly, although not evenly across all categories of reporting institutions. In identifying high-risk customers and beneficial owners, excessive discretion is provided in the law to financial institutions and there is no explicit requirement for enhanced due diligence. Having regard to the inherent risk in much of the financial service business in Liechtenstein, there is a need for additional attention to the quality and depth of the identification of beneficial owners and the conduct of ongoing due diligence.

Legal Systems and Related Institutional Measures

8. Liechtenstein's crime rate is low, with a total of 1,189 recorded crimes in 2006, of which 616 were economic crimes. About 36 percent of these cases were solved. The major criminal activities identified by the authorities as predicate offenses for money laundering are economic offenses, in particular fraud, criminal breach of trust, asset misappropriation, embezzlement and fraudulent bankruptcy, as well as corruption and bribery.

9. Money laundering is criminalized under Liechtenstein law broadly in line with the international standard. All categories of predicate offenses listed in the international standard are covered, apart from environmental crimes, smuggling, forgery, and market manipulation. Fiscal offences, including serious fiscal fraud, are not predicate offenses for money laundering. The money laundering offense extends to any type of property that represents the proceeds of crime. Although a conviction for a predicate offense is not required, the level of proof applicable to determine that proceeds are illicit remains unclear. At the time of the on-site visit, Liechtenstein did not have any jurisprudence on autonomous money laundering. Self-laundering is criminalized for the acts of concealing or disguising but not the converting, using, or transferring of criminal proceeds. Apart from conspiracy to commit money laundering, all ancillary offenses are criminalized in line with the international standard. The *mens rea* of the money laundering offense is the "intent to bring about the circumstances or result of money laundering" or to "seriously believe that facts that correspond to the legal

elements of money laundering might be brought about and accept that possibility" (*dolus eventualis*). Intent may be inferred from objective factual circumstances. Criminal liability does not extend to legal persons.

10. While financing of terrorism is criminalized under Liechtenstein law, the definition of the offense needs to be amended so that it fully covers all elements under the International Convention for the Suppression of the Financing of Terrorism. In particular, the definition of "terrorist organization" should be brought in line fully with the definition in the international standard and the financing of individual terrorists should be criminalized. At the time of the assessment, there had been no prosecutions or convictions for terrorist financing. As in the case of money laundering, there is no criminal liability of legal persons for financing of terrorism.

11. Liechtenstein does not have a specific disclosure or declaration system in place to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing. The authorities explained the necessity to first reach agreement with Switzerland on introducing a system to comply with the FATF Recommendations given that the two countries operate in a customs union.

12. With regard to seizure and confiscation, besides the conviction-based criminal forfeiture, the Liechtenstein criminal procedure also provides for the possibility of an in rem (object) forfeiture when conviction cannot be pursued. The effectiveness of the regime seems quite good, mainly because of the catch-all of the in rem confiscation procedure that closes all (potential) gaps. The system takes into account the specific situation of Liechtenstein as a financial center, and focuses particularly on asset recovery, which is widely used. Confiscation of the direct and indirect criminal proceeds (including substitute assets and investment yields), the product of the crime, the (intended) instrumentalities, and equivalent value are broadly covered. Criminal confiscation of the laundered assets as the object of the autonomous money laundering offense is however not formally covered. Moreover, confiscation of (intended) instrumentalities is seriously restricted by the condition that these objects can only be forfeited when they have a dangerous nature or are apt to be used in other crimes. This soft approach risks to undermine the deterrent effect of the measure and to deplete it substantially. The seizure regime follows the confiscation system and is used either for evidentiary purposes or to ensure effective forfeiture/confiscation. Everything that is subject to confiscation can be seized, including equivalent value seizure of untainted assets. There are appropriate legal means for tracing criminal assets or proceeds and following the money trail, including access to confidential account information.

13. The freezing of terrorist assets under UNSCR 1267 is adequately addressed in Liechtenstein, covering almost all required procedural aspects to make compliance effective. There is no domestic terrorist list, but action has been taken on the basis of foreign lists (European Regulation and OFAC). The procedure outside the UNSCR 1267 context is unspecific, as it goes through the common preventive and repressive process.

14. The Liechtenstein FIU is a typical intermediary administrative and functionally independent financial intelligence unit, also fulfilling a general intelligence function as a repository for all relevant data relating to criminal proceeds and terrorism. It conducts thorough operational analysis of the SARs received. It has legal powers to collect additional financial information from the disclosing entity though the powers to obtain additional information from DDA subjects other than the reporting entity are open to legal question. It has established a relationship of trust with the reporting entities and puts in a lot of effort in raising the awareness of the relevant sectors. It is fulfilling its task in an effective way and produces high standard reports.

15. Law enforcement in ML and FT cases rests in the first place with the Public Prosecutor and the national police, specifically the Economic Crime Unit which specializes in investigating financial crimes. Also involved are the investigative judges who have the power to impose coercive measures. The legal framework available to the law enforcement authorities is comprehensive enough to enable serious investigations and effective prosecutions.

16. ML-related investigations and proceedings are mostly initiated by mutual legal assistance requests and FIU reports. The percentage of investigations triggered by an FIU report is rather low. There is a general tendency to transfer the cases to the authorities of the jurisdiction where the predicate offense occurred, rather than taking up the investigation and prosecution in Liechtenstein. This practice is not without foundation, but it does keep the judiciary from developing its own experience and jurisprudence in stand-alone money laundering prosecutions and taking the matter more in their own hands.

Preventive Measures—Financial Institutions

17. AML/CFT preventive measures are defined in the Due Diligence Act, the requirements of which are expanded in secondary legislation in the Due Diligence Ordinance (DDO). The DDA was significantly revised in 2004 with the aim of transposing the revised FATF Recommendations, as well as the EC Directive 2001/97/EC. The DDA provides for due diligence to be completed by legal and natural persons (personal scope) when conducting financial transactions on a professional basis (substantive scope). All financial institutions fall under the personal scope of application and, in practice, all FATF-defined transactions are covered under the substantive scope of application.

18. Liechtenstein has established an overall risk-based approach which requires financial institutions to build, and keep updated a profile for each long-term customer. The profile, which is to be completed on a risk-sensitive basis, consolidates CDD data and includes notably beneficial ownership information, source of funds, and purpose of the relationship. Detection of suspicious activities is based on deviation from the profile on the basis of risk criteria. However, by comparison with the FATF Recommendations, the legal provisions may give excessive discretion to financial institutions when applying the risk-based system and do not fully comply with a number of specific criteria of the standard. The DDA and the

DDO provide only broad instructions with regard to determining high-risk criteria for customers, for all complex, unusual large transactions or unusual patterns of transaction, and for transactions from countries that do not or inadequately apply the FATF Recommendations, as well as to defining specific due diligence for PEPs or respondent banks. Legal or regulatory requirements do not fully address the misuse of new technologies. Identification, transaction and investigation records, which have to be maintained in Liechtenstein for at least 10 years, should also be sufficient to permit reconstruction of individual transactions and provide evidence for prosecution. Requirements for foreign branches and subsidiaries related to AML/CFT need to be strengthened, particularly as several of the Liechtenstein banks continue to expand their activities in other jurisdictions.

19. Provisions regarding CDD are broadly in line with the international standard, but, whether conducted directly or through intermediaries, they need to be strengthened further in some areas. The DDA and the DDO grant some exemptions to identification, and the requirements for identification of beneficial owners, as well as verification of customers' and beneficial owners' identity, need to be broadened. Financial institutions also may rely on domestic and foreign intermediaries that introduce new business to provide them with customer profile information and certified copies of identification documents, but also to conduct ongoing monitoring of customers and transactions. Moreover, financial institutions are legally protected (subject to certain conditions) from responsibility for deficiencies in CDD conducted by their intermediaries.

20. The FMA, which is an independent authority, is an integrated supervisor in charge of prudential and AML/CFT supervision, as well as customer protection. All financial institutions are licensed by the FMA on the basis of internationally-accepted criteria. The FMA has developed and implements effectively a broad range of AML/CFT preventive measures. For the most part, annual on-site due diligence examinations are carried out by external auditors under mandate of the FMA. A greater involvement of FMA supervisors in on-site inspection work would improve overall effectiveness and would require additional resources.

21. Financial institutions have defined internal instructions for AML/CFT diligence, implemented training programs for their staff, and designated managers in charge of ensuring and verifying compliance with law and regulations. Auditors indicated that compliance with AML/CFT measures have improved significantly, although not evenly across all categories of reporting institutions.

22. The scope of available criminal sanctions is broad and the FMA refers cases in practice to the Prosecutor for sanctioning. However, the proportionality and effectiveness of the overall sanction system are restricted by significant gaps in the ladder of available sanctions, as the scope for administrative sanctions is currently very narrow.

23. While the quality of suspicious activity reports received by the FIU appears to be high, having regard to the nature and complexity of much of the financial services business in

Liechtenstein, the overall effectiveness of the reporting system could be improved. A number of factors, notably the automatic freezing for five days of funds related to a filed report, appear to be suppressing the volume of reporting to the FIU. The reporting obligation needs to be amended to cover attempted occasional transactions and to ensure full coverage of all terrorist-financing cases. Protection for reporting in good faith should be broadened. The prohibition against tipping-off, currently restricted to 20 days, needs to be made unlimited in time, as also recommended in the 2002 assessment.

24. Action is needed to bring the requirements (and implementation thereof) for transmitting information with cross-border wire transfers into line with the international standard. The threshold of CHF5,000 for the identification exemption is above the USD/EUR1,000 limit; information requirements for international transactions are insufficient; operations with Switzerland are considered as domestic transfers; banks can avoid giving information for "legitimate reasons", and are not explicitly required to maintain information being transmitted through the payment chain. The authorities indicated that improvements are anticipated following the pending adoption in Liechtenstein of EC Regulation 1781/2006.

Preventive Measures—Designated Non-Financial Businesses and Professions

25. Liechtenstein's DNFBPs, with some exceptions, are subject to the obligations of the DDA and are supervised by the FMA in generally the same manner as are financial institutions. Article 3.2 DDA, which requires any natural or legal person who performs defined "financial transactions" on a professional basis to comply with the AML/CFT obligations (substantive scope), provides a blanket coverage which goes a long way to blurring the distinction between financial and non-financial institutions in this sphere.

26. In particular, Liechtenstein's very active trust and company service provider (TCSP) sector has been brought into the AML/CFT regime. Both the formation of a legal entity that is not commercially active in the domiciliary state and acting as an organ of such an entity are covered activities under the DDA and anyone performing them on a professional basis must conduct CDD, file SARs when they have suspicions, have appropriate internal controls, and be inspected for compliance by the FMA or its designated auditors. Inspections for DNFBPs occur once every three years, in contrast to the annual inspections of financial institutions.

27. In general, therefore, the AML/CFT legal framework for TCSPs in Liechtenstein is the same as for financial institutions and most of the general strengths and weaknesses of the preventative measures apply equally to them. The most critical TCSP-specific issue is the exemption for work on behalf of companies that are commercially active in the state in which they are domiciled. The FATF standard does not make a provision for such an exemption and, given that Liechtenstein TCSPs routinely set up companies in many foreign jurisdictions, the exemption could be very substantial and difficult to administer. In practice, both the TCSPs interviewed and the authorities report that the preventive measures in the

DDA are usually followed even in the case where a Liechtenstein TCSP is forming or acting as an organ of a commercially active company. This voluntary practice, while mitigating the risk, does not constitute a legal binding obligation on Liechtenstein TCSPs.

28. Liechtenstein lawyers, when they are not acting as TCSPs, are covered by the DDA when they are performing financial "gatekeeper" functions designated by the FATF standard. They enjoy appropriate legal privilege against reporting when they are representing clients in court proceedings. Auditors are similarly covered and privileged, although in practice the terms of their license would not allow them to manage money or accounts for clients.

29. There are currently no casinos in Liechtenstein, but if licenses are eventually granted, they will be required to identify clients at the door and report suspicious transactions. Real estate agents are obliged to conduct CDD and report suspicions concerning transactions outside of Liechtenstein, but not for transactions relating to property within the country, which are tightly controlled by a separate government agency which must approve every purchase of property. High-value goods dealers, including those in precious metals and stones, are covered for cash transactions above CHF25,000 [USD 21,000/EUR 15,250 at the time of the report]. Such transactions, however, were reported to occur only very rarely.

Legal Persons and Arrangements and Non-Profit Organizations

30. Liechtenstein's laws governing legal persons and arrangements are highly liberal and offer many different forms of companies and legal arrangements, including establishments (Anstalten), foundations (Stiftungen) and common-law style trusts. Most legal provisions are not mandatory and may be changed through founding deed or statute, allowing for any legal entity/arrangement to be custom tailored to the parties' needs. It is estimated that 90 percent of all companies registered in Liechtenstein are not commercially active.

31. Liechtenstein primarily relies on its trust service providers to obtain, verify, and retain records of the beneficial ownership and control of legal persons. All Liechtenstein legal entities/arrangements that are not commercially active have to have at least one Liechtenstein director/trustee and provide the Office of Land and Public Registration (GBOERA) with the name and address of the respective trust service provider. Although the GBOERA maintains and administers some information regarding the management and administration of companies and trusts, its main role with respect to beneficial ownership information is to link an entity/arrangement with a specific Liechtenstein trust service provider and thus allow the competent authorities to locate beneficial ownership information.

32. Trust service providers are obligated to obtain from the contracting party a written statement identifying the beneficial owner. Although the law does not explicitly require trust service providers to verify beneficial ownership information, in practice it appears that verification is obtained in most cases. With few exceptions, the obligation by trust service providers to obtain beneficial ownership information covers only persons who hold economic

rights to a specific legal entity/arrangement but does not cover curators, protectors, and other designated third parties controlling a structure.

33. For commercially-active companies, no formal measures are in place to ensure that beneficial ownership information is obtained, verified, and maintained. In practice, it appears that whenever a commercially-active company utilizes the services of a trustee or conducts a financial transaction, beneficial ownership information is obtained.

34. Nominee directors, nominee shareholders, protectors/collators and letter of wishes are permitted under Liechtenstein law and are frequently used in relation to trusts and Stiftungen.

35. Liechtenstein should conduct a full review of its laws concerning non-profit organizations (NPOs) to assess their adequacy for combating the financing of terrorism and conduct fuller outreach on CFT issues to its NPO sector. In general, to the extent that any Liechtenstein NPOs do raise or distribute funds, they are registered with and their financial transactions monitored by the Liechtenstein tax authorities.

National and International Cooperation

36. National cooperation between the authorities on AML/CFT matters was found to be effective, and there is evidence that Liechtenstein's ability and willingness to cooperate internationally and share available information has improved strongly. However, the legal basis for sharing of information with foreign supervisors needs to be strengthened as it currently relies on court decisions to overrule the legislative prohibitions. These court decisions related to the Banking Act and it is open to question as to whether the precedents established could extend also to insurance, investment undertakings, and certain DNFBPs (trustees, lawyers, and auditors). Moreover, the law provides customers with a right of appeal to the Superior Court, which could result in delays in the provision of information.

37. The FIU is active in international cooperation and may exchange information and otherwise cooperate with any counterpart financial intelligence unit abroad. In so doing, the FIU can exercise all the powers vested in it under the domestic law.

38. The legal framework of the mutual legal assistance (MLA) and extradition system is basically sound. The authorities positively cooperate to bring the proceedings to a satisfactory result. The significant scope for appeal is a delaying factor that is effectively used in some cases, however. The fiscal exception is also extensively interpreted in this domain: serious and organized fraud by way of fiscal means still profit from the amnesty Liechtenstein provides for fiscal offenses. At the time of the onsite visit, an amendment was pending to partially remedy this situation.