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(MONEYVAL)

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# Report on Fourth Assessment Visit – *Executive Summary*

Anti-Money Laundering and Combating the  
Financing of Terrorism

## Principality of Liechtenstein

2 April 2014

The Principality of Liechtenstein is a member of MONEYVAL. This is the fourth report in MONEYVAL's fourth round assessment visits, following up on the recommendations made in the third round. This evaluation was conducted by the International Monetary Fund (IMF). A representative of MONEYVAL participated as an evaluator in the assessment and also examined compliance with the European Union anti-money laundering Directives where these differ from the FATF Recommendations, therefore falling within the remit of MONEYVAL examinations. The report on the 4<sup>th</sup> Assessment Visit was adopted by MONEYVAL at its 44<sup>th</sup> Plenary (Strasbourg, 31<sup>st</sup> March - 4 April 2014).

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## **LIST OF ACRONYMS USED**

|       |   |
|-------|---|
| AML   | Anti-Money Laundering                               |
| CDD   | Customer Due Diligence                              |
| CFT   | Combating the Financing of Terrorism                |
| DDA   | Due Diligence Act                                   |
| DDO   | Due Diligence Ordinance                             |
| DNFBP | Designated Non-Financial Businesses and Professions |
| EDD   | Enhanced Due Diligence                              |
| EEA   | European Economic Area                              |
| EU    | European Union                                      |
| FATF  | Financial Action Task Force                         |
| FI    | Financial institution                               |
| FIU   | Financial Intelligence Unit                         |
| FMA   | Financial Market Authority                          |
| FSA   | Foundation Supervisory Authority                    |
| FT/TF | Financing of terrorism                              |
| ISA   | Insurance Supervision Act                           |
| MER   | Mutual Evaluation Report                            |
| ML    | Money laundering                                    |
| MLA   | Mutual legal assistance                             |
| NPO   | Non-profit organisation                             |
| OPP   | Office of the Public Prosecutor                     |
| PGR   | Persons and Companies Act                           |
| SAR   | Suspicious Activity Report                          |
| STR   | Suspicious Transaction Report                       |
| TCSP  | Trust and Company Services Provider                 |
| UNSCR | United Nations Security Council Resolution          |
| VAT   | Value-added tax                                     |

# EXECUTIVE SUMMARY

## I. KEY FINDINGS

1. **Liechtenstein has made significant steps and achieved considerable progress since the last mutual evaluation**, particularly in bringing its legal framework more closely in line with the Financial Action Task Force (FATF) recommendations, consolidating an overall robust institutional framework for combating money laundering (ML) and terrorist financing (TF) and moving towards greater transparency. Domestic cooperation is robust, and key stakeholders enjoy the trust of the financial and nonfinancial sectors.

2. **However, effective implementation is uneven and not always optimal.** Liechtenstein's proactive use of the *in rem* regime of confiscation of criminal proceeds has proven to be quite effective, however, the near absence of convictions for ML and the exiguous number of ML stand-alone prosecutions, already noted by the last mutual evaluation, call into question the effectiveness of the criminal approach to ML. The feedback received from several countries on mutual legal assistance (MLA) and the statistics provided by the authorities show that substantive progress has been achieved in an area that is particularly relevant, given that practically all the predicate offenses to ML occur outside the country. While the majority of countries indicated, to varying degrees, that information exchange with the Liechtenstein's Financial Intelligence Unit (FIU) is good, a few were more critical. The number of onsite inspections carried out by the Financial Market Authority (FMA) has increased significantly since the last mutual evaluation, but the over-reliance on external firms to conduct on-site inspections, the lack of a fully-fledged risk-based approach to supervision and the limited use of sanctions somewhat reduce the overall effectiveness of the supervisory regime. Finally, the effective implementation of the preventive measures and of the reporting of suspicious transactions is uneven across and within the various sectors subject to the anti-money laundering (AML)/counter financing of terrorism (CFT) requirements, and affected by the over-reliance on trust and company service providers (TCSPs) for the performance of certain elements of the customer due diligence (CDD) process.

3. **Few, albeit significant, legal shortcomings remain.** The most important one concerns financial secrecy provisions, which are fragmented, not always fully coordinated, and could have an impact on the FIU's core functions and negatively affect the overall effectiveness of the AML/CFT regime. A review of all secrecy provisions should be undertaken to remove any inconsistencies and to ensure that these provisions do not limit or pose a challenge to an effective implementation of the AML/CFT framework. There should be a clear provision stating that authorities' powers with regard to AML/CFT supersede any secrecy provisions enshrined in other laws.

4. **There are some intrinsic vulnerabilities, of which authorities are aware, that continue to expose the country to risk of ML (and could, potentially, create a risk of FT).** The business model of Liechtenstein's financial center focuses on private banking, wealth management, and mostly non-resident business, which are regarded as high risk by the FATF. It includes the provision of corporate structures such as foundations and other companies and trusts that are designed for wealth management, the structuring of assets, and asset protection. Banks continue to be exposed to ML risks as they offer a variety of products that can be abused for ML purposes. The TCSP sector in Liechtenstein is particularly vulnerable to the risk of ML (and, potentially, to FT) because of the

services offered and the types of customers served, who often are intermediated, non-resident, and components of existing legal structures. While industry representatives were generally aware of AML/CFT measures and obligations, their level of implementation is not always commensurate with the risk level of the sector. The role of TCSP in creating often very complex legal persons that can make it challenging to trace back beneficial ownership amplifies the risk that this particular sector is facing. The insurance sector has developed over the years, and a number of suspicious transaction reports (STRs) have been submitted that showed an increasing use of insurance products. The real estate sector does not appear to pose particular risks, considering the limited possibilities of investment and the inaccessibility for foreigners. There are no *bureaux de change*, no notaries, and (as yet) no casinos in Liechtenstein.

5. **The vulnerabilities of the TCSP sector impact the entire framework in Liechtenstein** due to their central role as repository of beneficial ownership information (for the purpose of Recommendation 33), and the over-reliance placed upon them by financial institutions and other Designated Non-Financial Businesses and Professions (DNFBPs) in carrying out the CDD process. These risks are further amplified by a general and residual tendency for industry and other participants to prioritise confidentiality. To mitigate these risks, the authorities should consider requiring enhanced due diligence (EDD). Such EDD should go well beyond the minimum current requirement of a signed certificate stating the identity of the beneficial owner and should include a high degree of knowledge of the expected profile of business coming from the beneficial owner.

#### A. Legal Systems and Related Institutional Measures

6. **Liechtenstein has brought the ML offense fully in line with the relevant convention and FATF standards, but there are questions on its effective implementation.** The substantial number of investigations only very exceptionally results in a domestic ML prosecution, and there was only one conviction since 2007. The repressive approach is still under pressure as a result of its reliance on external factors and the perceived high level of burden of proof concerning the predicate criminality. Liechtenstein maintains a policy of transferring prosecutions to foreign judicial authorities whenever this measure is deemed more effective. The recommendation of the previous assessment to develop autonomous money laundering cases to attenuate the (over)reliance on external factors has not yet been followed up.

7. **The authorities took great care to ensure the technical implementation of the CFT standards.** All FT Convention Treaties have entered into force in Liechtenstein and the sole financing of all offenses covered by the relevant treaties is now punished as terrorist financing. Another important gap has been addressed by penalising the financing of a terrorist individual or group as such. The imprisonment term is rather low, particularly in comparison with the sanctions wielded by most European jurisdictions, weakening their deterrent and dissuasive effect. All in all, however, the legal and institutional framework is adequate enough to capture any FT indication.

8. **A strong point in the Liechtenstein AML/CFT system is its focus on asset recovery.** Beside the criminal confiscation the Liechtenstein regime also features a civil forfeiture procedure that is systematically used to significant effect for foreign predicate proceeds, taking priority over criminal convictions. The civil *in rem* confiscation procedure is indeed a powerful and effective tool, particularly in a criminal policy system that is quite reliant on foreign investigations and prosecutions. The results of the Liechtenstein confiscation regime, translated in the number of conservatory

measures, the systematic use of the *in rem* confiscation possibilities and the overall amount of forfeited criminal assets, must be underscored, notwithstanding some elements can hamper the performance of the system. In particular, the seizure/confiscation measures dispatch still can suffer from dilatory procedures before the Constitutional Court, which merits a serious reflection by the legislator to strike an appropriate balance between the protection of fundamental rights and a reasonable application of the procedures.

9. **The adoption of the Enforcement of International Sanctions Act (ISA) significantly improved the legal framework governing the terrorist asset freezing regime in Liechtenstein, but some issues remain.** Except for public guidance on delisting, there are now clear-cut procedures in place for challenging or reviewing the administrative measures and governmental decisions on freezing listed terrorists' assets, both in a United Nations Security Council Resolution (UNSCR) 1267 and 1373 context. The ISA restriction to only enforce the sanctions adopted by the "most significant trading partners" cannot be reconciled with the general purport of UNSCR 1373 by unduly narrowing the implementation of the resolution from the very start. Also, neither the ISA nor any other legal text determines how to proceed in the event of the establishment of a domestic list.

10. **The FIU's power to obtain additional information from any reporting entity was strengthened right after the onsite visit. However, the FIU's power to gather information established by Article (Art.) 4.3. of the FIU Act is subject to secrecy provisions and could affect the FIU's ability to properly undertake its core functions.** Additionally, certain provisions in sector-specific laws restrict the possibility for the FIU to get the full range of information it needs from the FMA. Liechtenstein should ensure that none of the FIU's powers to request and obtain information from domestic authorities and reporting entities are subject to any unduly restrictive conditions and should amend Art. 4.3. of the FIU Act in that regard. Clear provisions should be introduced to compel domestic authorities to provide information requested by the FIU, and reporting entities should be subject to specific sanctions for failure to provide information to the FIU when so requested.

11. **The quality of notifications disseminated by the FIU to the Office of the Public Prosecutor (OPP) has improved over time as a result of an enhancement to the analytical process.** The FIU should keep this aspect of its functions under constant vigilance to ensure that the improved quality of notifications is maintained. The FIU issued comprehensive guidelines on the manner of reporting, including standard reporting forms and the procedure to be followed in the submission of Suspicious Activity Reports (SARs) by reporting entities and has continued providing training to reporting entities.

## **B. Preventive Measures—Financial Institutions**

12. **Liechtenstein's legal framework for preventive measures has been significantly improved, but its effectiveness is hampered by certain characteristics inherent in the business model and by issues related to the implementation of the AML/CFT requirements across the financial industry.** While there is a general understanding of AML/CFT obligations, their implementation and effectiveness are negatively affected by certain factors. Effectiveness is particularly undermined by the prevalence of and over-reliance on professionals (mostly trustees) introducing contracting parties, both foreign and domestic, who often establish and represent legal structures on behalf of the customer, which is a predominant characteristic of the Liechtenstein's

financial business model. Such arrangements might distort the various elements of AML/CFT obligations, particularly the identification and verification of the beneficial owner. Financial institutions (FIs) do not necessarily consider the high risk activities and customers specifically categorised by the FATF and the Basel Committee on Banking Supervision. Accordingly, the effectiveness of the AML/CFT framework is undermined by a failure to treat identified higher risk customers and activities as such. Assessors noted uneven implementation of due diligence obligations across FIs, often without regard for the high risk nature activities and customers. Certain FIs described thoughtful and thorough policies and procedures developed based on risk, whereas other institutions described weak risk assessments and policies and procedures that appeared to be taken directly from the minimum requirements set forth in law, without giving thought to prevailing risks specific to the institution or instituting additional procedures to effectively manage risks. Of particular note are deficiencies related to the general lack of development of exhaustive customer profiles based on reliable and up-to-date information and documentation, necessary to fully understand customers and their beneficial owners, including in the cases of higher risk legal entity customers with complex structures. The documentation used to verify the parties to a relationship varies across the industry. FIs and DNFBPs alike should improve the effectiveness of the CDD measures undertaken, including by implementing procedures to develop a more thorough understanding of the customer and related parties based on reliable and up-to-date information and documentation, with an increased focus on the beneficial owner(s).

13. **The preventive measures framework is broadly in line with the international standard, but a number of technical deficiencies remain.** Most notably, verification measures for customers and beneficial owners do not have to be based on reliable sources in all instances; certain blanket exemptions under the Due Diligence Act (DDA) for simplified CDD are not permissible under the international standard; and there is no requirement in the DDA that CDD measures have to be applied to all existing customers at appropriate times and on the basis of materiality. For purposes of cross-border correspondent relationships, there is an unjustified presumption that all European Union (EU) and European Economic Area (EEA) countries adequately apply the FATF Recommendations. Enhanced CDD measures are required only for persons in, but not from high risk jurisdictions. The DDA grants the authorities only few countermeasures to apply to high risk jurisdictions. Record keeping requirements are adequate, albeit some minor deficiencies have been identified in relation to business correspondence and transaction records.

14. **The reporting requirement has been brought fully in line with the standard, particularly in relation to terrorist financing and attempted (occasional) transactions, but its effective implementation is uneven and hampered by certain factors.** The automatic five-day freezing mechanism was retained. However, the FIU was empowered to release certain transactions before the expiry of the freezing period. The requirement to submit SARs to the prosecutor's office by the FIU exposes the reporting entity that has filed the SAR. Although all reporting entities were aware of their reporting obligation, the level of understanding of the implementation of the reporting obligation was not found to be satisfactory in all cases. A large majority of SARs were triggered by negative information on the customer in the media or commercial intelligence database. The main contributor of SARs is the banking sector, which is the main component of the financial sector in Liechtenstein. The FIU received five SARs on FT, none of which substantiated a concrete case of FT. However, the FIU has not conducted an assessment to determine whether the number of FT SARs

should be higher. It is recommended that the authorities assess whether the number of FT SARs is commensurate with the FT threat in Liechtenstein, in light of available information on the FT risks.

15. **Secrecy provisions should be harmonised and revised, as they could affect core functions of the FIU and, more generally, the sharing of information.** The FMA has broad powers to access confidential information, but conflicting provisions in sector-specific laws and the DDA do not clearly allow the sharing of such information domestically, including with the FIU. No measures are in place to ensure that secrecy provisions in sector-specific laws do not inhibit FIs' ability to share confidential information in cases where this is required under the FATF standard. Liechtenstein has taken significant steps towards promoting transparency versus confidentiality, but remnants of a culture of confidentiality, heritage of the past business model, could still pose challenges. To avoid any obstacles on this issue, the authorities should amend either sector-specific laws such as the Banking Act or the DDA to clarify in express terms that the FMA's powers under the DDA supersede any secrecy provisions enshrined in other laws, and that Liechtenstein FIs may share otherwise confidential information with other FIs in cases where this is required under FATF Recommendations 7 or 9. It should also be clarified expressly that the FMA can share confidential information with the FIU, regardless of existing secrecy provisions.

16. **The supervision of compliance by FIs and DNFBPs with their AML/CFT obligations is the responsibility of the FMA, which has the powers it needs to undertake its functions. However, the effective implementation of the AML/CFT supervisory regime needs to be enhanced.** There is an over-reliance on private audit firms to conduct inspections which may reduce the effectiveness of those inspections and affect the quality of supervision overall. The use of private audit firms also creates a potential conflict of interest, which is not being fully mitigated, as audit firms are appointed by the FMA, but nominated and paid for by the obligated firms. The negligible number of sanctions and assessors' interviews with obligated firms indicate that the audit firms' reviews may not be sufficiently rigorous. Moreover, although the FMA accompanies the audit firms on some inspections (and conducts a few itself), it does not gain the wide market experience of the state of compliance that it would if it were conducting all inspections. The FMA should conduct more inspections itself and strengthen the measures to mitigate the risk of conflict of interest in mandated audit firms.

17. **Effective supervision is also affected by the absence of a fully fledged risk-based approach to the allocation of inspection resources to different institutions.** Although the annual inspections by audit firms produce information that is used by the FMA to assess individual firms, there is no routine off-site reporting of AML/CFT, and the information received from audit firms is not sufficiently analysed to detect broader trends and patterns. Although the DDA/Due Diligence Ordinance (DDO) obligations are detailed, there is scope for more guidance to specify the FMA's expectations the context of the particular risks of the prevailing business models. The supervisory approach, including the annual inspection cycle for FIs, does not focus either on the higher risk firms or the higher risk business areas within firms. The DNFBP sector has a longer three-year inspection cycle despite TCSPs being riskier in themselves and the source of risk for the FIs. The FMA should use its supervisory tools in full and, to enhance effectiveness, should adopt a risk-based approach amending its guidance to audit firms accordingly. Inspections should be more risk based and there should be greater use of themed inspections so as to target resources on higher risk business, particularly the TCSPs.



18. **The FMA has a range of sanctions available to enforce the AML/CFT measures, but should make more effective use of them.** The FMA has sanctions at its disposal against individuals, including fines (although the maximum fine for institutions is too small to be dissuasive and should be increased). The FMA, in practice, rarely imposes sanctions beyond written warnings. It should make more effective use of its more serious sanctions.

#### **C. Preventive Measures—Designated Nonfinancial Businesses and Professions**

19. **All the DNFBP specified by the FATF Recommendations are covered by the DDA and all the obligations applicable to the FI extend also to DNFBPs.** The deficiencies noted above in relation to FIs thus equally apply to DNFBPs. Casinos are subject to an additional set of laws and regulations, but Liechtenstein has not yet issued any licenses for casinos, and the practical application of these additional legal requirements could not be reviewed.

20. **DNFBPs, TCSPs in particular, do not effectively implement the policies and procedures to manage AML/CFT risk and to thoroughly understand their customer, beneficial owner, related parties, and related legal structures based on exhaustive and credible documentation.** Deficiencies relate to on-going monitoring procedures that are ineffective in identifying and investigating suspicious activity and to uneven implementation of due diligence obligations across the sector. Of particular concern is that these weaknesses have a cascading effect throughout the Liechtenstein financial system due to the culture of trust amongst TCSPs and FIs, specifically common practice for FIs and other DNFBPs to rely on TCSPs for provision and certification of customer information.

21. **The TCSP sector in Liechtenstein is particularly vulnerable to the risk of ML and, potentially, FT, with far-reaching consequences on the overall effectiveness of Liechtenstein's AML/CFT regime.** The risk of compliance failures and the consequential vulnerability to abuse by money launderers, fraudsters, and others is heightened, not simply because these kinds of businesses are cited in the FATF methodology as high risk business, but also because the TCSP sector is the least regulated element of the system with no comprehensive licensing and prudential regime (at the time of the onsite visit) and AML/CFT inspections being carried out only every three years. Moreover, because of resource constraints, the authorities only carry out onsite inspections at TCSPs every three years unless there is a reason for increasing the frequency. Information held by Liechtenstein professional trustees may not always be accurate. Liechtenstein trustees rely heavily on introducers, many of which are foreign trustees or lawyers. The Liechtenstein trustees in such cases are permitted to rely on declarations from foreign introducers on beneficial owners, which may be mistaken or inaccurate and yet could be passed to FIs in Liechtenstein without further verification. At the same time, TCSPs in their capacity of representatives, shareholders, and managers of legal entities are also customers of FIs. Any weaknesses in the TCSP sector can thus rapidly spread through the financial system as a whole. The FMA should consider increasing the frequency of the TCSP inspection cycle based on risk and conducting more targeted inspections

#### **D. Legal Persons and Arrangements and Non-profit Organisations**

22. **There has been significant progress since the last Mutual Evaluation Report (MER) in improving the transparency of Liechtenstein's legal framework concerning legal persons and arrangements and non-profit organisations, but there are weaknesses that may still pose a risk**

**and affect effective implementation.** While the basics of the legal regime concerning most types of legal persons and arrangements have remained unaltered since the previous MER, there have been important changes: the DDO's definition of beneficial owner has been amended to also extend it to those who control legal entities; a new law on foundations was adopted in 2008, a new law (December 2012) introduced new requirements concerning bearer shares and certificates and for certain types of companies to keep shareholders registers at the registered seat of the company. Through the requirements enshrined in Art. 180a of the Persons and Companies Act (PGR), Liechtenstein ensures that most legal entities have a director subject to the DDA, which is a strong element of the legal framework. There are, however, still significant challenges in the effective implementation and some inherent vulnerabilities and weaknesses. On the one hand, there are elements of risk inherent in some types of institutions that can be created in Liechtenstein, such as deposited foundations and *anstalten*, which can be used as a placeholder for more complex structures and whose regime, legal and in practice, has elements that make it challenging to identify the beneficial owner or the beneficiaries. On the other, the characteristics of Liechtenstein's regime of access to beneficial owner information, based on TCSP as the main repository of beneficial owners information and FMA and law enforcement authorities' access to that information raises questions on its effectiveness, given the issues of effectiveness noted with regard to trustees' implementation of CDD requirement and their supervision by the FMA. Finally, the recent introduction of an immobilisation and registration system for bearer shares is a positive step forward, although it is too early to form a final opinion on its effectiveness, in the absence of a specific risk assessment on the ML risk they may pose to Liechtenstein and considering that legal entities that issue bearer shares very often do so for the totality of their shares. Authorities should improve the transparency of legal persons and arrangements established under Liechtenstein law by, inter alia: (i) strengthening supervision of TCSPs to ensure that they obtain and maintain full, accurate, and up-to-date information on beneficial owners of legal entities and arrangements; (ii) clarifying the powers of the competent authorities to obtain, compel, and share confidential information, domestically and internationally, for the purpose of Recommendation 33; and (iii) (also in light of the new FATF standard) subject "deposited" foundations to the same registration requirements as "registered" foundations.

23. **In 2009, the Foundation Supervisory Authority (FSA) was established to oversee the activities of foundations set up with a common-benefit purpose.** Associations set up with a common-benefit purpose are still not subject to any form of supervision. The supervision of NPOs by the FSA, which is carried out with the assistance of audit firms appointed for that purpose, does not adequately extend to FT issues. No measures are in place to sanction violations of measures applicable to NPOs. The laws regulating NPOs were reviewed in June 2008 to strengthen the responsibilities of the founder and enhance the governance of foundations. However, the review was not preceded by a review to understand the NPO sector in Liechtenstein and determine the features and types of NPOs that are at risk of being misused for FT. The outreach provided by the FSA to the NPO sector to protect it from FT abuse was very limited.

#### **E. National and International Cooperation**

24. **Liechtenstein has a robust system of domestic cooperation.** The creation of the PROTEGE working group, which is chaired by the FIU and consists of the major AML/CFT stakeholders is an important step consolidating the long-standing work of organising a coordinated AML/CFT regime, addressing operational cooperation issues as well as the more recent work of

preparing for the implementation of the new standards, including the national risk assessment, on which authorities were working at the time of the onsite visit. The issues noted with regard to financial secrecy laws may affect the effectiveness of the domestic exchange of information. Cooperation and exchange of information between the FMA and the FIU should be enhanced.

25. **International cooperation is of fundamental importance in a country like Liechtenstein. MLA traffic is quite intense in both directions, and the figures indicate a generally responsive approach by Liechtenstein.** The MLA system has improved its effectiveness range, particularly with the important steps taken in speeding up the process by reducing the possibility of delaying procedural tactics, which resulted in a significant shortening of the average implementation duration from 91 to 59 days. Serious and organised fiscal fraud has been excluded from the fiscal exception rule insofar it relates to serious value-added tax (VAT) fraud affecting the budget of the EU. Particularly with regard to obtaining bank records, the effectiveness of the legal procedures could be challenged in the presence of dilatory tactics, such as noted in the context of the confiscation regime. Authorities should also assess if legal privilege could have an impact on the effectiveness of international cooperation.

26. **In extradition matters, there is a clear cooperative willingness of the Liechtenstein judiciary to assist in an effective administration of justice.** The duration of the extradition proceedings have in practice been substantially reduced to a reasonable average of around three months. Dilatory procedural tactics before the Constitutional Court have been met by an adequate response of giving priority to extradition matters.

27. **The FIU generally exchanges available information with its foreign counterparts in a timely manner. However, a number of factors could restrict the FIU's powers to exchange information.** In response to a request for information from a foreign FIU, the Liechtenstein FIU can only obtain information from a reporting entity if a SAR has been submitted, and the power to obtain information indirectly through the FMA is limited. These factors could have an impact on the constructive and effective nature of information exchanged with foreign FIUs. In view of the significance of international cooperation within the context of international business conducted in and from Liechtenstein, measures should be taken to ensure that the competent authorities in Liechtenstein, especially the FIU, are able to provide the widest range of international cooperation to their foreign counterparts. Authorities should in particular consider to establishing a clear power of the FIU to obtain confidential and other information from reporting entities and other authorities in the case of a request of information from a foreign FIU.

28. **The FMA is able to obtain confidential information for the purposes of international cooperation and is obliged to provide information to foreign authorities, subject to certain conditions.** The FMA's power to obtain confidential information for the purpose of foreign cooperation is clearly provided for FIs. The position with respect to TCSPs is less clear, but the assessors accept that judicial decisions must be assumed to provide the FMA with the power to obtain confidential information from TCSPs and pass it to foreign authorities. The FMA can conclude agreements for cooperation, but can exchange confidential information in the absence of such agreements. The FMA can protect confidential information received from foreign authorities.

29. **The confidentiality equivalence provisions in the sector-specific acts for FIs are less restrictive, but the DDA is the only statute available for exchanging confidential information**

**relating to TCSPs.** There is a risk of a challenge based on the strict interpretation of the law. Also, under the DDA, the FMA is obliged to apply a test relating to the protection of confidential information by a requesting country which could, if interpreted strictly, prevent such an exchange. The FMA should seek to remove this provision and replace it with a more general provision requiring adequate confidentiality protection by a recipient authority.

## RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to The Principality of Liechtenstein. *It includes ratings for FATF Recommendations from the 3<sup>rd</sup> round evaluation report that were not considered during the 4<sup>th</sup> assessment visit. These ratings are set out in italics and shaded.*

| Forty Recommendations                                       | Rating    | Summary of factors underlying rating <sup>1</sup>  |
|---|-----------|--|
| <b>Legal systems</b>  |           |  |
| 1. Money laundering (ML) offense                            | <b>PC</b> | <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Level of proof required to establish the predicate offense;</li> <li>• Only one conviction since 2007;</li> <li>• No autonomous ML prosecutions.</li> </ul>  |
| 2. <i>ML offense—mental element and corporate liability</i> | <i>LC</i> | <ul style="list-style-type: none"> <li>• <i>There is no criminal liability of corporate entities;</i></li> <li>• <i>Liechtenstein has not yet developed its own case law on money laundering.</i></li> </ul>   |
| 3. Confiscation and provisional measures                    | <b>LC</b> | <ul style="list-style-type: none"> <li>• Art. 98a of the Criminal Procedure Code (CPC) does not cover information gathering with some relevant categories, such as payment system providers, e-money institutions, insurance mediators and designated nonfinancial businesses and professions (DNFBPs);</li> <li>• Scope of legal privilege capturing auditors is too broad and could hamper authorities' powers to identify and trace property that is, or may become subject to confiscation or is suspected of being proceeds of crime;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Confiscation hampered by high burden of proof to establish the link between the illegal assets and the specific predicate offenses that generated them;</li> <li>• Delaying procedural tactics and abuse of legal privilege concerns (dual capacity).</li> </ul> |

<sup>1</sup> These factors are only required to be set out when the rating is less than Compliant.

| Preventive measures                                 |           |  |
|---|-----------|--|
| 4. Secrecy laws consistent with the Recommendations | <b>PC</b> | <ul style="list-style-type: none"> <li>• Secrecy conditions under the Financial Intelligence Unit (FIU) Act and the restrictions on the Financial Market Authority (FMA)'s power to access and share confidential information domestically could limit the FIU's ability to properly undertake its functions;</li> <li>• No measures to clarify that secrecy provisions in sector specific laws to not inhibit a financial institution's ability to share confidential information in cases where this is required under Financial Action Task Force (FATF) Recommendations 7 or 9;</li> <li>• The reference under Art. 37 of the Due Diligence Act (DDA) to the foreign supervisor having to be subject to the same secrecy provisions as contained in Art. 23 of the COPE for the FMA to exchange confidential information is too restrictive.</li> </ul>  |
| 5. Customer due diligence (CDD)                     | <b>PC</b> | <ul style="list-style-type: none"> <li>• Verification measures for beneficial owners are not required to be based on reliable sources; verification measures for customers that are legal entities are not in all cases required to be based on reliable sources;</li> <li>• No obligation to carry out reviews of existing records as part of the ongoing CDD, including for higher risk categories of customers or business relationships;</li> <li>• The blanket exemptions for CDD under Art. 10 of the DDA are not permissible under the FATF standard;</li> <li>• Art. 18(2) is too broad in that it allows not only for verification, but also for identification measures to be delayed in certain circumstances. No requirement that the delayed measures are carried out as soon as reasonably practicable, and all aspects of ML risks are effectively managed;</li> <li>• No express requirement to apply CDD measures to all existing customers at appropriate times and on the basis of materiality, which results in the existence of legacy accounts with incomplete CDD;</li> <li>• High threshold of CHF 25,000 for identification of existing anonymous or bearer passbooks, accounts, or custody accounts;</li> <li>• CDD obligation for occasional transactions only extends to cash transactions;</li> </ul> |

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|  |           | <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Inconsistent application of due diligence measures across FIs, frequently with limited access to the CDD information and documentation that is held by Trust and Company Services Providers (TCSPs), including information necessary to understand the customer and the beneficial owner(s);</li> <li>• Due diligence measures fall short of the enhanced due diligence measures required for higher risk categories including issues related to verification that weaken CDD measures;</li> <li>• Lack of emphasis on understanding the nature and purpose of the relationship, including understanding related legal structures and the relationship to the beneficial owner;</li> <li>• Risk indicators issued to assist FIs in defining risk categories for its customers and transactions do not seem practical.</li> </ul> |
| 6. Politically exposed persons (PEPs)            | <b>LC</b> | <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• General (sometimes sole) reliance on commercial databases for the identification of PEPs; sometimes with infrequent reviews and minimal use of other means of identification.</li> </ul>   |
| 7. Correspondent banking                         | <b>LC</b> | <ul style="list-style-type: none"> <li>• Provisions on cross-border correspondent banking do not apply for correspondent institutions in other European Economic Area (EEA) member states;</li> <li>• No requirement for Liechtenstein correspondent institutions to ensure that correspondent institutions anti-money laundering (AML)/counter-financing of terrorism (CFT) controls are adequate and effective.</li> </ul>   |
| 8. New technologies and nonface-to-face business | <b>LC</b> | <ul style="list-style-type: none"> <li>• No express obligation for persons subject to the law to have in place policies or measures to prevent use of technological developments for ML/FT;</li> <li>• No provisions are in place that would require FIs to implement policies and procedures to address the risks associated with nonface-to-face transactions (as opposed to business relationships) as part of ongoing due diligence.</li> </ul>  |
| 9. Third parties and introducers                 | <b>LC</b> | <ul style="list-style-type: none"> <li>• Presumption that all European Union (EU) and EEA countries adequately apply the FATF Recommendations.</li> </ul>  |

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| 10. Record keeping       | <b>LC</b> | <ul style="list-style-type: none"> <li>• No express obligation to keep business correspondence;</li> <li>• No measures in place to ensure that transaction records permit the reconstruction of individual transactions in all cases.</li> </ul>  |
| 11. Unusual transactions | <b>LC</b> | <ul style="list-style-type: none"> <li>• Lack of clear guidance and criteria pertaining to complex transactions;</li> <li>• Issues of effectiveness.</li> </ul>   |
| 12. DNFBP–R.5, 6, 8–11   | <b>PC</b> | <ul style="list-style-type: none"> <li>• Verification measures for beneficial owners and for customers that are legal persons are not in all cases required to be based on independent source documents, data or information;</li> <li>• No obligation to carry out reviews of existing records as part of the ongoing CDD, including for higher risk categories of customers or business relationships;</li> <li>• The blanket exemption for CDD under Art. 10 of the DDA is not permissible under the FATF standard;</li> <li>• Art. 18(2) is too broad in that it allows not only for verification but also for identification measures to be delayed in certain circumstances. No provision that delayed verification is only allowed where it can be assured that the delayed measures are carried out as soon as reasonably practicable, and the ML risks are effectively managed. No express requirement to apply CDD measures to all existing customers on the basis of materiality;</li> <li>• No express obligation to have in place policies or measures to prevent use of technological developments for ML/FT;</li> <li>• No obligation for DNFBPs to satisfy themselves that the third party has measures in place to comply with the CDD requirements set out in R.5 and 10;</li> <li>• No express obligation to keep business correspondence;</li> <li>• No specific requirement that records need to be sufficient to permit the reconstruction of individual transactions;</li> <li>• Both for land-based and online casinos, in many instances the threshold for carrying out CDD on transactions is too high;</li> <li>• Land-based and online casinos are not required to</li> </ul> |



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|   |           | <p>identify and take reasonable measures to verify the identity of the beneficial owner in all cases required under Recommendation 12;</p> <ul style="list-style-type: none"> <li>• Land-based and online casinos are not required to determine whether a customer or beneficial owner is a politically exposed person in all cases required under Recommendation 12;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Inconsistent application of due diligence measures across DNFBPs, with gaps in implementation of essential measures;</li> <li>• Implementation of due diligence measures fall short of the enhanced due diligence measures required for higher risk categories, which are characteristic of the financial system;</li> <li>• Lack of emphasis on understanding the nature and purpose of the relationship, including understanding related legal structures and the relationship to the beneficial owner;</li> <li>• Reliance on foreign intermediaries and introducing parties, without appropriate mechanisms in place to ensure access to complete and verified information and documentation regarding the relevant parties.</li> </ul> |
| 13. Suspicious transaction reporting                | <b>LC</b> | <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• The automatic five-day freezing on filing a suspicious action report (SAR) may have an adverse effect on the reporting mechanism;</li> <li>• Requirement to submit SARs to the Office of the Public Prosecutor (OPP) by the FIU hinders the effectiveness of the reporting obligation, as it exposes the reporting entity that has filed the SAR;</li> <li>• Inadequate understanding of the reporting requirement by some FIs.</li> </ul>   |
| 14. Protection and no tipping-off                   | <b>LC</b> | <ul style="list-style-type: none"> <li>• The tipping-off prohibition does not apply to information related to a SAR.</li> </ul>  |
| 15. <i>Internal controls, compliance, and audit</i> | <b>LC</b> | <ul style="list-style-type: none"> <li>• <i>No requirement for financial institutions to screen for probity when hiring new employees;</i></li> <li>• <i>No express requirement for financial institutions to maintain adequately resourced the requisite internal audit function</i></li> </ul>   |
| 16. DNFBP–R.13–15 and 21                            | <b>PC</b> | <ul style="list-style-type: none"> <li>• There is no specific obligation for the compliance</li> </ul>   |

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|  |           | <p>officer to be at a management level;</p> <ul style="list-style-type: none"> <li>• Art. 11(6) of the DDA does not require enhanced CDD with respect to persons from (as opposed to in) high risk countries;</li> <li>• No sufficient wide power to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries;</li> <li>• The tipping-off prohibition does not apply to information related to a SAR;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Inadequate understanding of reporting requirements by DNFBPs;</li> <li>• Low number of SARs, except for TCSPs;</li> <li>• Internal programs are not developed by all DNFBPs;</li> <li>• Training is not undertaken by all DNFBPs;</li> <li>• Audit functions to test compliance are not utilised by all DNFBPs.</li> </ul> |
| 17. Sanctions                                    | <b>LC</b> | <ul style="list-style-type: none"> <li>• Administrative fines for institutions are not proportionate or dissuasive;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Use of sanctions too limited to act as effective, dissuasive and proportionate deterrence to non-compliance.</li> </ul>   |
| 18. Shell banks                                  | <b>LC</b> | <ul style="list-style-type: none"> <li>• <i>Licensing requirements do not provide sufficient safeguards to exclude the possibility of establishing a shell bank in Liechtenstein.</i></li> </ul>   |
| 19. Other forms of reporting                     | <b>C</b>  | -  |
| 20. Other NFBP and secure transaction techniques | <b>C</b>  | -  |
| 21. Special attention for higher risk countries  | <b>LC</b> | <ul style="list-style-type: none"> <li>• Art. 11(6) of the DDA does not require enhanced CDD with respect to persons from (as opposed to in) high risk countries;</li> <li>• No sufficiently broad power to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries.</li> </ul>  |
| 22. Foreign branches and subsidiaries            | <b>C</b>  | -  |

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| 23. Regulation, supervision, and monitoring      | <b>LC</b> | <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Over-reliance on audit firms to conduct the majority of inspections with insufficient measures to mitigate the risk of conflicts of interest, undermines the effectiveness of such inspections in identifying weaknesses in AML/CFT defences, loses the FMA the opportunity to disseminate best practices learned from inspections, and thereby reduces the quality of supervision;</li> <li>• Absence of a risk-based approach to the allocation of inspection resources to different institutions reduces the effectiveness of supervision;</li> <li>• Limited aggregate off-site analysis of trends and patterns revealed by information received from annual inspections.</li> </ul> |
| 24. DNFBP—regulation, supervision and monitoring | <b>LC</b> | <ul style="list-style-type: none"> <li>• <i>Proportionality and effectiveness of sanction system is restricted by significant gaps in the ladder of available sanctions, as the scope of administrative sanctions is very narrow;</i></li> <li>• <i>No corporate criminal liability is defined;</i></li> <li>• <i>Proportionality and effectiveness of sanctions system is restricted by significant gaps in the ladder of available sanctions.</i></li> </ul>   |
| 25. Guidelines and Feedback                      | <b>LC</b> | <ul style="list-style-type: none"> <li>• <i>No written guidelines issued by the FIU regarding SAR reporting;</i></li> <li>• <i>FMA guidelines should be updated, particularly to provide guidance on enhanced due diligence;</i></li> <li>• <i>No guideline has been issued with regard to CFT requirements.</i></li> </ul>  |
| <b>Institutional and other measures</b>          |           |  |
| 26. The FIU                                      | <b>PC</b> | <ul style="list-style-type: none"> <li>• The FIU’s access to information that it requires to properly undertake its function (criterion 26.3) could be hindered as a result of the following restrictions in the law: (i) the power to obtain information is subject to secrecy provisions; (ii) power to obtain information indirectly is affected by the limitations that the FMA has in providing confidential information to the FIU; (iii) no clear obligation for the FMA or law enforcement to provide the FIU with the requested information;</li> <li>• The FIU’s power to obtain additional information from reporting entities (criterion 26.4) could be</li> </ul>   |

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|  |                      | <p>restricted by Art. 4(3) of the FIU Act;</p> <ul style="list-style-type: none"> <li>• The restriction on the FIU’s ability to obtain information subject to legal provisions relating to the protection of secrecy has an impact on the FIU’s adherence to the Egmont Group’s Principles for Information Exchange (paras. 12-13);</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• The FIU’s unclear authority to request additional information in the period under review could have had an impact on the FIU’s ability to obtain information from reporting entities other than the reporting entity submitting the SAR.</li> </ul> |
| 27. Law enforcement authorities        | <b>LC</b>            | <ul style="list-style-type: none"> <li>• No ML convictions as a result of absence of autonomous money laundering prosecutions (impacts on effectiveness).</li> </ul>   |
| 28. Powers of competent authorities    | <b>C</b>             | -  |
| 29. Supervisors                        | <b>LC</b>            | <ul style="list-style-type: none"> <li>• No specific provisions that allow the FMA to ensure that financial institutions apply AML/CFT measures consistent with FATF Recommendations across financial groups.</li> </ul>   |
| 30. Resources, integrity, and training | <b>LC</b>            | <ul style="list-style-type: none"> <li>• Staff allocation between divisions has left DNFBP supervision division with inadequate staff to process onsite inspection reports on a cycle that reflects the risk of the sector.</li> </ul>   |
| 31. National cooperation               | <b>LC</b>            | <ul style="list-style-type: none"> <li>• Issues of financial secrecy (noted under R.4) affect the effectiveness of domestic exchange of information;</li> <li>• Cooperation FMA/FIU needs enhancement.</li> </ul>  |
| 32. Statistics                         | <b>C<sup>2</sup></b> |  |
| 33. Legal persons—beneficial owners    | <b>PC</b>            | <ul style="list-style-type: none"> <li>• The system in place does not ensure adequate transparency on beneficial ownership of legal persons;</li> <li>• The system in place does not always allow access in a timely fashion to adequate, accurate and current information on the beneficial ownership of legal persons;</li> </ul>  |

<sup>2</sup> The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition, it has also taken into account the findings from the 3<sup>rd</sup> round report on Recommendation 38.

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|  |                 | <ul style="list-style-type: none"> <li>• Powers of FMA to access information restricted to supervisory functions;</li> <li>• Measures in place for bearer shares are not adequate and commensurate to risk of ML;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Inadequate implementation of CDD requirements of DNFBPs and ineffective supervision; sanctions for noncompliance with registration/notification requirements are not dissuasive and not applied in practice; low number of inspections by the Office of Justice (OJ).</li> </ul> |
| 34. Legal arrangements—beneficial owners | LC              | <ul style="list-style-type: none"> <li>• Restrictive legal framework concerning the FMA’ access to beneficial ownership information;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• The issues noted under Recommendation 12, the three year inspection cycle affects, in the particular context of Liechtenstein, the effectiveness of the measures envisaged to prevent the misuse of trusts, as the information on beneficial ownership may not be adequate or accurate.</li> </ul>  |
| <b>International Cooperation</b>         |                 |   |
| 35. Conventions                          | LC              | <p>Implementation of Vienna/Palermo Convention:</p> <ul style="list-style-type: none"> <li>• Art. 98a CPC does not cover information gathering with some relevant categories, such as payment system providers, E-money institutions, insurance mediators and DNFBPs;</li> </ul> <p>Implementation of UN International Convention for the Suppression of the Financing of Terrorism:</p> <ul style="list-style-type: none"> <li>• R.5-related issues (Art. 18.1.b of the Convention).</li> </ul>  |
| 36. Mutual legal assistance (MLA)        | LC <sup>3</sup> | <ul style="list-style-type: none"> <li>• Not all DDA subjects are under the obligation to supply relevant information as provided by Art. 98a CPC;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Issues of legal privilege and confidentiality in dual capacity situations;</li> </ul>   |

<sup>3</sup> The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition, it has also taken into account the findings from the 3<sup>rd</sup> round report on Recommendation 28.

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|   |           | <ul style="list-style-type: none"> <li>Particularly with regard to obtaining bank record, the effectiveness of the legal procedures could be challenging in the presence of dilatory tactics.</li> </ul>   |
| 37. <i>Dual criminality</i>                 | <b>C</b>  | -  |
| 38. <i>MLA on confiscation and freezing</i> | <b>LC</b> | <ul style="list-style-type: none"> <li><i>Restricted confiscation for instrumentalities also in MLA context;</i></li> <li><i>No consideration of asset forfeiture fund.</i></li> </ul>   |
| 39. Extradition                             | <b>C</b>  | -  |
| 40. Other forms of cooperation              | <b>PC</b> | <p>Issues concerning the FMA:</p> <ul style="list-style-type: none"> <li>Art. 37 of the DDA requiring foreign supervisor having to be subject to the same secrecy provisions as contained in Art. 23 of the COPE is unduly restrictive;</li> </ul> <p>Issues concerning the FIU:</p> <ul style="list-style-type: none"> <li>The FIU's access to information could be restricted by secrecy provisions (Art. 4(3) of the FIU Act);</li> <li>Ambiguity in the FIU Act (Art. 7) concerning secrecy and exchange of information;</li> <li>Limitations noted with regard to FMA's access to information on behalf of domestic third parties and sharing of information limits ability of the FIU to make inquiries on behalf of foreign counterparts;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>Concerns on the quality of information exchanged by the FIU expressed by a number of jurisdictions;</li> <li>Given the particular importance of the FIU's cooperation with foreign FIUs, the FIU's inability to request additional information (e.g., beneficial ownership information) from reporting entities pursuant to a request from a foreign FIU has a negative impact on the effectiveness of its framework for the exchange of information.</li> </ul> |