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

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4th ROUND MUTUAL EVALUATION OF LIECHTENSTEIN

EXIT FOLLOW-UP REPORT SUBMITTED TO MONEYVAL

WRITTEN ANALYSIS ON PROGRESS IN RESPECT OF THE CORE AND KEY RECOMMENDATIONS

19 NOVEMBER 2018

Liechtestein is a member of MONEYVAL. This progress report was adopted at MONEYVAL's 57th Plenary meeting (Strasbourg, 3-7 December 2018). For further information on the examination and adoption of this report, please refer to the Meeting Report of the 57th plenary at http://www.coe.int/moneyval.

LIST OF ACRONYMS USED

AML/CFT	Anti-money laundering/combating the financing of terrorism
BO	Beneficial Owner
CC	Criminal Code
CDD	Customer Due Diligence
CPC	Criminal Procedural Code
DDA	Due Diligence Act
DDO	Due Diligence Ordinance
DNFBP	Designated Non-Financial Businesses and Professions
EDD	Enhanced Due Diligence
EU	European Union
FATF	Financial Action Task Force
FIs	Financial Institutions
FIU	Financial Intelligence Unit
FMA	Financial Market Authority
FT	Financing of Terrorism
GDP	Gross Domestic Product
ISA	International Sanctions Act
LEA	Law Enforcement Agency
MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
NC	Non-Compliant
NPO	Non-profit organisation
NRA	National Risk Assessment
PC	Partially Compliant
PCA	Persons and Company Act
PEP	Politically-exposed person
R	Recommendation
SAR	Suspicious Activity Report
STRs	Suspicious Transaction Reports

TCSPs	Trust and Company Services Providers
VLGS	Association of Liechtenstein Charitable Foundations

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Introduction

1. The purpose of this paper is to introduce Liechtenstein's third follow-up report to the Plenary, concerning the progress that it has made to remedy the deficiencies identified in the fourth round mutual evaluation report (MER) on selected Financial Action Task Force (FATF) Recommendations.
2. Liechtenstein deems that sufficient progress has been made to be considered for removal from the regular follow-up process, and has applied to be removed from the process.

Background information

3. The on-site visit to Liechtenstein took place from 12 to 24 June 2013. MONEYVAL adopted the fourth round MER of Liechtenstein at its 44th plenary meeting (31 March-4 April 2014). As a result of the fourth round evaluation process, Liechtenstein was rated partially compliant (PC) on 11 Recommendations[1], including on several core[2] and key[3] recommendations, as indicated in the table below:

Core Recommendations rated PC (no Core Recommendations were rated NC)
Recommendation 1 (Money laundering offence) Recommendation 5 (Customer due diligence)
Key Recommendations rated PC (no Key Recommendations were rated NC)
Recommendation 4 (Secrecy Laws) Recommendation 26 (Financial Intelligence Unit) Recommendation 40 (Other forms of international cooperation) Special Recommendation III (Freeze and confiscate terrorist funds)
Other Recommendations rated PC (no other Recommendations were rated NC)
Recommendation 12 (DNFBPs – R.5, 6, 8-11) Recommendation 16 (DNFBPs – R.13-15 and 21) Recommendation 33 (Legal persons) Special Recommendation VIII (Non-profit organisation) Special Recommendation IX (Cross-border declaration and disclosure)

4. Upon the adoption of the report, Liechtenstein was placed under the regular follow-up procedure and was asked to report in two years (April 2016), on the actions taken to address the factors/deficiencies underlying any of the 40+9 Recommendations that are rated PC. The country was encouraged to seek removal from the follow-up process within three years after the adoption of the 4th round MER or very soon thereafter.

1 It should be pointed out that the FATF Recommendations were revised in 2012 and that there have been various changes, including their numbering. Therefore, all references to the FATF Recommendations in the present report concern the version of these standards before their revision in 2012.
2 The core Recommendations, as defined in the FATF procedures, are R.1, SR.II, R.5, R.10, R.13 and SR.IV.
3 The key Recommendations, as defined in the FATF procedures, are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III and SR.V.

5. Liechtenstein presented its first progress report under regular follow-up during the 51st MONEYVAL Plenary meeting (27-29 September 2016). The Plenary noted that a new FIU Law had been adopted in 2016, addressing the deficiencies related to the FIU access to information. The technical deficiencies concerning the preventive measures were remedied as part of the process to transpose the EU's 4th Round AML Directive into the domestic law. At the time of the first progress report, no autonomous ML convictions had been achieved with respect to the laundering of proceeds generated by a foreign predicate offence. The Plenary noted that Liechtenstein had made satisfactory progress and invited the country to seek removal from the regular follow-up process by September 2018.

6. At its 56th meeting, the MONEYVAL Plenary found that Liechtenstein has taken sufficient steps to remedy the remaining deficiencies identified under the remaining Core and Key Recommendations rated "partially compliant" in the 4th round MER (R.1, R.5, R.4, R.26 and R.40). In addition, the Plenary noted that Liechtenstein strengthened its legal and regulatory framework for freezing and confiscating terrorist assets, although the country still lacked written procedures for domestic designations. Based on the progress achieved and in the light of the decision taken at the 51st MONEYVAL Plenary meeting - for Liechtenstein to seek removal from the follow-up process in the second half of 2018 - the Plenary invited Liechtenstein to present further progress regarding R.1 (including on the legislative process) and seek removal from the follow-up process at MONEYVAL's 57th Plenary in December 2018.

7. The present analysis has been drafted by the Secretariat to assess the progress made in relation to the implementation of R1 as decided during the 56th Plenary meeting and on the "other Recommendations – not Key or Core – rated PC in the 4th Round MER. The analysis pertaining to other Key and Core Recommendations remain as presented (and adopted) in the 56th Plenary meeting. In assessing whether sufficient progress has been made, effectiveness is taken into account to the extent possible in a paper-based review and primarily through the consideration of data provided by the country. It is also important to note that these conclusions do not prejudge the results of future assessments, as they are based on information which has not been verified through an onsite process.

Overview of Liechtenstein's Progress

National Risk Assessment

8. Liechtenstein has completed its first National Risk Assessment (NRA) in January 2018, based on the World Bank methodology. Representatives of all competent authorities and private sector representatives have participated in the elaboration of the NRA. Authorities reported that information on the findings of the NRA will be provided to the private sector at large shortly. Risk based measures have been identified and an action plan will be drafted in the first half of 2018. Meanwhile, the inter-agency AML/CFT working group is elaborating on the methodology for a second iteration of the NRA, planned to be completed in 2019.

Legislative developments

9. The most significant legal measures implemented by Liechtenstein since the adoption of the 4th round MER include:

- revised Due Diligence Act (DDA)
- revised Due Diligence Ordinance (DDO)
- revised International Sanctions Act (ISA)
- revised Criminal Code (CC)
- revised Persons and Company Act (PGR)
- revised FMA Guideline 2013/1 on the risk based approach to applying CDD
- revised FMA Guideline 2013/2 on due diligence inspections by mandated due diligence auditors and the Financial Market Authority (FMA)
- FMA Instruction 2017/25 on the sector specific interpretation of DDA and DDO provisions
- FMA Communication 2017/3 on the electronic reporting pursuant to the Due Diligence Act (offsite reporting which allows for the AML/CFT risk assessment of obliged firms for the purposes of risk based supervision)
- FMA Communication 2015/7: Questions and answers related to the identification of the beneficial owner(s) pursuant to the Due Diligence Act (DDA)
- Revised FIU Guideline on suspicious activity reporting of October 2017
- New FIU Guideline on the implementation of financial sanctions of December 2017
- In August 2018, the Government sent a legislative proposal into consultation to amend Art. 165 of the Criminal Code (CC; money laundering offence) in order to cover all offences with more than one year imprisonment as predicate offences to money laundering. The consultation period ended in late September 2018. The bill is tabled in Parliament for its December session with second and third reading planned for March 2019.

Main conclusions and recommendations to the Plenary on progress made since the 4th round MER

Core Recommendations

Recommendation 1

Deficiencies identified in the 4th round MER: *(1) Level of proof required to establish the predicate offense; (2) Only 1 conviction since 2007; (3) No autonomous ML prosecutions*.

10. Since all identified deficiencies pertain to effectiveness, the progress will be analysed collectively.

11. According to the authorities, in 2016 and 2017, nine individuals have been finally convicted for ML charges. This includes three autonomous money laundering cases[4], out of which one generated by an FIU analytical report. All cases had an international component.

12. In 2017 an overall number of 20 indictments for money laundering (9 based on FIU disseminated cases and 11 without prior STR) were submitted (5 of these for autonomous money laundering). One conviction was pronounced for autonomous ML which resulted in a rather soft sentence (12 months conditional). Three convictions did not become final in 2017 because of pending appeals.

13. In 2018[5], 59 new investigations for ML were initiated (32 based on FIU disseminated cases and 27 without prior STR). In these cases, 145 individuals and 26 legal persons are currently under investigation. An overall number of 7 indictments for money laundering (3 based on FIU disseminated cases and 4 without prior STR) were submitted to the Courts, 2 of these for autonomous ML charges.

14. In the same period, 8 individuals (in 7 cases) have been finally convicted for ML. This includes one autonomous money laundering case, which was generated by an FIU analytical report. Four individuals (in 4 cases) have been convicted for ML charges at first instance; these convictions are not final yet pending appeals. In the referred time span, there was one final acquittal in a ML case. No legal persons have been convicted for ML so far.

15. To address the concerns related to the level of proof required for the predicate offence, the Government has set up a working group led by the Office of Justice to propose changes to the Criminal Code to increase effectiveness. The report has been submitted to the Ministry of Justice in January 2018 and provides concrete drafting proposals to amend paragraph 165 of the Criminal Code (ML offence). In 2018, the Government will decide on the next steps. It is planned that the amendments will be tabled in Parliament before the end of 2018.

16. From the statistics and case descriptions provided by the authorities it can be concluded that progress has been achieved by Liechtenstein on the implementation of the effectiveness concerns related to R1. Three convictions in autonomous ML cases were achieved, and on-going legislative measures were reported to address the deficiency regarding the level of proof required for the predicate offence.

Recommendation 5

Deficiency 1: *The 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.*

17. This deficiency has been addressed through the amendments brought in 2017 to Art. 11 (2) of the DDO, which clarifies that the written confirmation by the contracting party or an authorised party has to be obtained in addition to the more general requirement set out in Art. 7 to Art. 7b of the DDA to take reasonable measures to verify the identity of the beneficial owner(s).

18. Implementing Art. 30 (8) and Art. 31 (6) of the 4th AML Directive, Art. 11 (3) of the DDO also clarifies that in order to meet the obligation referred to in Art. 7 of the DDA, financial institutions

[4] See the detailed description of two cases in the Second Follow-up Report of Liechtenstein.

should not rely exclusively on the information contained in beneficial owner registers. They are required to conduct their own verification measures.

Deficiency 2: *There is no obligation to carry out reviews of existing records as part of the on-going CDD, including for higher risk categories of customers or business relationships.*

19. According to the revised provisions of the DDA, the obliged persons are explicitly required to run checks at intervals commensurate to the risks involved, to establish whether the CDD information and data (including beneficial owner information) of the business profile are still current (Art. 8 (2)). The profile of the business relationship ("business profile") must be established according to Art. 8 (1) DDA. For higher risk business relationships this review has to be undertaken at least every two years and every three to five years for business relationships with a regular risk profile (now explicitly set out in the FMA Guidelines 2013/1 on the risk based approach). In cases of low risk business relationships the profile must be updated as warranted (e.g. when an "alert" is generated in the monitoring system). The obliged person has to define the frequency of the updates for each risk category in the internal instructions.

Deficiency 3: The blanket exemptions for CDD under Art. 10 of the DDA are not permissible under the FATF standard.

20. With the revision of the Law, the blanket exemptions have been abolished. Pursuant to the amended Art. 10 of the DDA, the application of simplified due diligence is only permissible, if, after conducting an appropriate risk assessment as referred to in Art. 9a DDA, financial institutions deem that there is only a minor risk of money laundering, organised crime and terrorist financing in specific areas. Before applying simplified due diligence, financial institutions shall verify that the risks associated with the business relationship or transaction are minor (Art. 10 (2) DDA).

Deficiency 4: Art. 18 (2) DDO 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.

21. The deficiency has been addressed through the amendments to Art. 18 (2) of the DDO which now stipulates that the reporting entities are only allowed to delay the verification of the identity of the customer or the beneficial owner if this is necessary to maintain the normal conduct of business and there is a low risk of money laundering and terrorist financing.

Deficiency 5: 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.

22. The transitional provisions of the revised DDA (para. 5 to 8) prescribe that the revised CDD measures have to be applied to all existing customers as from 1 June 2018. The identification and verification of the identity of the beneficial owner in existing business relationships that were commenced prior to 1 January 2016, and to which enhanced due diligence is applicable must be repeated no later than 31 December 2018. For all other business relationships, the identification and verification must be repeated no later than 31 December 2020.

Deficiency 6: High threshold of CHF 25,000 for identification of existing anonymous or bearer passbooks, accounts, or custody accounts.

23. Complete CDD measures in line with the current statutory requirements have to be applied as described above. According to para. 10 of the transitional provisions of the DDA, existing contractual relationships as referred to in Art. 13 (3) (bearer savings books, accounts or deposits), shall be dissolved as soon as the relevant documents have been presented to the bank or the postal institution. Outflows of assets are only permitted if the bank has properly identified and verified the identity of the holder of the relevant document and the beneficial owner as set out in Art. 6 and 7 DDA before paying out any assets (thresholds have been removed).

Deficiency 7: CDD obligation for occasional transactions only extends to cash transactions.

24. With the amendments to Art. 2 (1) (d) of the DDA, the term *"occasional transactions"* is defined as *"operations and transactions, especially money exchange, cash subscription of medium-term notes and bonds, cash buying or selling of bearer securities and cashing of cheques, unless the operation or transaction is carried out via an existing account or custody account in the name of the client"*.

Deficiency 8: Inconsistent application of due diligence measures across FIs, frequently with limited access to the CDD information and documentation that is held by TCSPs, including information necessary to understand the customer and the beneficial owner(s).

25. To ensure a consistent application of these new CDD measures across all FIs, the FMA has also issued the Communication 2015/7, which sets out the interpretation of the new rules related to the identification of the beneficial owner pursuant to the DDA and DDO. The FMA Communication contains numerous example cases to ensure a clear and consistent understanding by all FIs. It also specifies that TCSPs are required to provide to FIs so that they can gain a better understanding of their customers and the beneficial owner(s). This measure ensures that FIs have full access to necessary information and documentation that is held by TCSPs.

Deficiency 9: 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.

26. The ECDD measures that FIs are required to apply on higher risk business relationships are now set out on a statutory level in Annex 2 of the DDA. Enhanced due diligence measures include: i) obtaining the consent of a member of the executive body before a business relationship is commenced or continued; ii) obtaining information concerning the commercial purpose of intended transactions or transactions that have been processed; iii) more frequent updates to the business profile; iv) enhanced on-going monitoring and more frequent checking of transactions by setting appropriate thresholds and appropriate transaction patterns which require enhanced scrutiny etc.

Deficiency 10: Lack of emphasis on understanding the nature and purpose of the relationship, including understanding related legal structures and the relationship to the beneficial owner.

27. The new FMA Communication 2015/7 requires FIs and DNFBPs to establish and record in detail the entirety of the legal structures and the relationship to the beneficial owner. This requirement is indirectly pointing to the need to understand the nature and purpose of the business relationship through the prism of the ownership. The authorities reported that emphasis is placed on the issue of nature and purpose of the business relationship on the occasion of training events and onsite inspections.

Deficiency 11: *Risk indicators issued to assist FIs in defining risk categories for its customers and transactions do not seem practical.*

28. More practical risk indicators have been included in Annex 1 and 2 of the DDA. These risk indicators reflect the examples of risk mentioned in the Interpretive Note to FATF Recommendation 10. Additional indicators have been included in the FMA Guidelines 2013/1.

29. The technical shortcomings identified in the 2014 MER have been addressed. Some of the deficiencies (Deficiencies 8-11) represent effectiveness concerns and a desk analysis cannot draw a complete picture of the progress achieved. The Liechtenstein supervisory authorities should incentivize compliance and verify the effective application of the new legal provisions, in particular by increasing the number of inspections undertaken by FMA (based on the statistics sent by the authorities, a decreasing trend regarding the inspections at fiduciaries and persons with a licence under the 180a Act has been noted – see Annex to Follow-up Report). Nevertheless, the legal developments reported and the examples and documents provided by the Liechtenstein authorities to support the progress accomplished on effectiveness side, create sufficient grounds to consider that the rating is now up to a level equivalent to Largely Compliant.

Key Recommendations

Recommendation 4

Deficiency 1: Secrecy conditions under the FIU Act and the restrictions on the FMA's power to access and share confidential information domestically could limit the FIU's ability to properly undertake its functions.

30. Under new Article 6 of the FIU Act, mechanisms for domestic information sharing between competent authorities have been specified. The Liechtenstein FIU can request and submit upon request any relevant information from/to any competent authority if deemed necessary. The limitations noted with regard to FMA's access to information on behalf of domestic third parties have become obsolete. However, the FIU access to additional information from the reporting entities remains indirect, and the effective information exchange is still to be assessed in the context of the next evaluation round.

Deficiency 2: No measures to clarify that secrecy provisions in sector specific laws do not inhibit FI's ability to share confidential information in cases where this is required under FATF Recommendation 7 or 9.

31. The newly introduced Art. 16a of the DDA prescribes that sharing of information in the following circumstances shall take precedence over all official obligations of confidentiality: i) in the context of a delegation as referred to in Art. 14 DDA (*third party reliance*); and in the use of the correspondent banking services as referred to in Art. 2 (1) m) of the DDA (*correspondent banking*).

Deficiency 3: The reference under Art. 37 of the 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.

32. The reference under Art. 37 of the 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 has been abolished (see Art. 37 (2) (b) DDA).

33. All the deficiencies identified in the 4th round MER have been addressed by the Liechtenstein authorities. The Secretariat is of the opinion that the rating for R.4 is now up to a level at a minimum equivalent to Largely Compliant.

Recommendation 26

Deficiency 1: *The FIU's access to information 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) the power to obtain information indirectly is affected by the limitations that the FMA has in providing confidential information to the FIU; and (iii) no clear obligation for the FMA or law enforcement to provide the FIU with the requested information.*

34. With the amendments brought to the FIU Act (Article 6), mechanisms for domestic information sharing between competent authorities have been specified. Further on, the new Article 5a Para 1 of the FIU Act obliges all domestic authorities to swiftly respond to any FIU queries The FIU can request and submit upon request any relevant information from/to any competent authority if deemed necessary. From a desk analysis it is difficult to assess the timeliness of the FIU access to information (from the private sector for example). This will be subject to review under the 5th round of mutual assessments.

Deficiency 2: The FIU's power to obtain additional information from reporting entities (criterion 26.4) could be restricted by Art.4(3) of the FIU Act.

35. With the amended FIU Act and DDA, the FIU`s power to request additional information from reporting entities has been significantly broadened, including the cases where there is a suspicion of ML/FT or predicate offences. More precisely, Article 19a Para.1 of the DDA stipulates that the FIU can request any type of information the reporting entities are obliged to keep in compliance with the due diligence requirements and reporting obligations. The DDA also foresees sanctions for non-compliance by reporting entities with this provision. Article 19a Para. 2 DDA now grants the FIU a power to ask for non-personalized data and information from reporting entities for statistical purposes. This power was introduced to allow the FIU to i) identify and further explore ML/FT and predicate offences related trends, methods and typologies when conducting strategic analysis and ii) to be able to collect all necessary data and information for strategic analysis such as the National Risk Assessment.

Deficiency 3: *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).*

36. The new Art. 19(a) (1), the disclosure request from the FIU shall take precedence over all obligations of confidentiality recognised by the Government.

Deficiency 4: *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.*

37. As reported by the authorities, Article 19a Para.1 DDA stipulates that the FIU can request any information reporting entities are obliged to hold in the application of Art. 20, which includes CDD and SAR information. This addresses the technical concerns regarding the FIU's ability to obtain information from reporting entities. The effective application of the new provisions shall be reviewed in the context of the new round.

38. All the technical deficiencies identified in the 4th round MER have been addressed by the Liechtenstein authorities. The effectiveness concerns remain to be evaluated in the course of the 5th round. At this stage, the Secretariat is of the opinion that the rating for R.26 is now up to a level at a minimum equivalent to Largely Compliant.

Recommendation 40

Deficiency 1: *Art. 37 of the DDA requiring foreign supervisor having to be subject to the same secrecy provisions as contained in Art. 23 of the Law on Control and Oversight of Public Enterprises (COPE) is unduly restrictive*.

39. With the revision of the DDA, the reference to the secrecy provisions contained in Art. 23 of the COPE was deleted. Art. 37 (37 (2) (b) of the DDA now reads: *"the recipients and the persons employed and mandated by the recipient are subject to a statutory obligation of confidentiality in respect of information acquired in the course of their official business and this obligation continues to apply after their employment service has ended"*.

Deficiency 2: The FIU's access to information could be restricted by secrecy provisions (Art. 4(3) of the FIU Act.

40. The references to secrecy conditions have been removed from the FIU Act and the authorities reported that the sector specific laws now stipulate that the obligation to respond to queries by competent authorities with regard to ML/FT, supersede any sector specific secrecy provisions. Domestic information sharing mechanisms have been fostered in Article 6 FIU Act. All domestic authorities are clearly obliged to provide the FIU with any information it deems necessary to perform its functions appropriately. Further to that, new Article 5a Para 1 obliges all domestic authorities to swiftly respond to any FIU queries.

Deficiency 3: Ambiguity in the FIU Act (Art. 7) concerning secrecy and exchange of information.

41. The secrecy considerations have been removed from Art. 7 of the FIU Act.

Deficiency 4: 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.

42. The amendments of the DDA and the FIU Act have fostered the FIU`s power to request information on behalf of foreign counterparts, regardless of whether or not a SAR has been filed previously. The Liechtenstein authorities reported the following statistics concerning the requests for additional information since the adoption of the revised provisions.

Nature of Request	Period under review: 1 March 2016 – 31 Dec 2017		
	Total number of requests sent to reporting entities	Total amount of SARs	Total number of foreign requests through Egmont
Article 19a Para 1 DDA request for additional information (including to third parties) in the absence of a SAR	100	567	
Article 19a Para 1 DDA request for information to reporting entities on behalf of foreign counterparts	114		428

Deficiency 5 and 6: Concerns on the quality of information exchanged by the FIU expressed by a number of jurisdictions (effectiveness); 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.

43. The technical concerns raised in the course of the 4th round of evaluations have been addressed, and this fact bears positive consequences on effectiveness. The Liechtenstein authorities reported that between 1 March 2016 and 31 Dec 2017, the FIU responses to foreign requests increased to 428. This demonstrates an increased international information exchange by the FIU. The authorities reported that no complaints have been received since the date of the amendment of the FIU powers.

44. The technical deficiencies identified in the 4th round MER have been addressed by the Liechtenstein authorities. Based on the desk-review, the Secretariat is of the opinion that the rating for R.40 is now up to a level at a minimum equivalent to Largely Compliant.

Special Recommendation III

Deficiency 1: Scope of application of ISA 2008 restricted in relation to UN Res. 1373.

45. The revised International Sanctions Act (ISA) has entered into force on 1 October 2017. Art. 1 (2a) provides that the law applies mutatis mutandis to coercive measures serving to enforce international obligations set out in paragraph 1(c) and (d) of United Nations Security Council resolution 1373 (2001).

Deficiency 2: No procedures in place for domestic designations.

46. The PROTEGE working group led by the FIU is responsible for preparing domestic designations. The sanctions sub-group would meet whenever a domestic designation has to be made but no written procedure are in place and no precedent has been reported by the authorities.

Deficiency 3: No public guidance on the procedures for de-listing from the Al-Qaeda and Taliban UN list.

47. Art 8 (a) of the revised ISA "*Request for removal or non-application"* provides that any affected person affected by a coercive measure may submit to the Government a substantiated request to have their name removed from the annex of an ordinance referred to in Article 2 (2) or for non-

application of the coercive measure. The FIU Guidance for the implementation of the ISA, in Chapter 4, describes the procedures for de-listing domestically, as well as through the UN Ombudsman Procedure.

Deficiency 4: *Effectiveness affected by deficiencies in CDD application and transparency of legal persons and arrangements.*

48. Liechtenstein authorities reported progress on the application of R.5 and R.33[6]. The impact on effectiveness of the application of the freezing and confiscation of terrorist funds remains to be re-assessed in the course of the next round.

49. Overall, it has to be concluded that Liechtenstein further strengthened its legal and regulatory framework for freezing and confiscating terrorist assets. The effectiveness of the system cannot be assessed as no assets have been frozen to date. Liechtenstein still lacks written procedures for domestic designations. Nonetheless, the Secretariat is of the opinion that the level of compliance with SR.III is now equivalent to Largely Compliant.

Other Recommendations rated PC

Recommendation 12

Deficiency 1: *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.*

50. This deficiency has been addressed through the amendments brought in 2017 to Art. 11 (2) of the DDO, which clarifies that the written confirmation by the contracting party or an authorised party has to be obtained in addition to the more general requirement set out in Art. 7 to Art. 7b of the DDA to take reasonable measures to verify the identity of the beneficial owner(s).

51. Implementing Art. 30 (8) and Art. 31 (6) of the 4th AML Directive, Art. 11 (3) of the DDO also clarifies that in order to meet the obligation referred to in Art. 7 of the DDA, financial institutions should not rely exclusively on the information contained in beneficial owner registers. They are required to conduct their own verification measures.

Deficiency 2: *No obligation to carry out reviews of existing records as part of the on-going CDD, including for higher risk categories of customers or business relationships.*

52. According to the revised provisions of the DDA, the obliged persons are explicitly required to run checks at intervals commensurate to the risks involved, to establish whether the CDD information and data (including beneficial owner information) of the business profile are still current (Art. 8 (2)). The profile of the business relationship ("business profile") must be established according to Art. 8 (1) DDA. For higher risk business relationships this review has to be undertaken at least every two years and every three to five years for business relationships with a regular risk profile (now explicitly set out in the FMA Guidelines 2013/1 on the risk based approach). In cases of low risk business relationships the profile must be updated as warranted (e.g. when an "alert" is generated in the monitoring system). The obliged person has to define the frequency of the updates for each risk category in the internal instructions.

6 See Secretariat's analysis on R.5 and Liechtenstein Follow-up Report on R.33

Deficiency 3: *The blanket exemption for CDD under Art. 10 of the DDA is not permissible under the FATF standard.*

53. With the revision of the DDA, the blanket exemptions have been abolished. Pursuant to the amended Art. 10 of the DDA, the application of simplified due diligence is only permissible, if, after conducting an appropriate risk assessment as referred to in Art. 9a DDA, financial institutions deem that there is only a minor risk of money laundering, organised crime and terrorist financing in specific areas. Before applying simplified due diligence, financial institutions shall verify that the risks associated with the business relationship or transaction are minor (Art. 10 (2) DDA).

Deficiency 4: *Art. 18(2) DDO 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*.

54. The deficiency has been addressed through the amendments to Art. 18 (2) of the DDO which now stipulates that the reporting entities are only allowed to delay the verification of the identity of the customer or the beneficial owner if this is necessary to maintain the normal conduct of business and there is a low risk of money laundering and terrorist financing.

Deficiency 5: *No express obligation to have in place policies or measures to prevent use of technological developments for ML/FT.*

55. Art. 9 (2) of the DDA provides that the reporting entities are required to ensure that the risks arising from the development of new products or commercial practices or from the use of new or developing technologies are assessed in advance and taken into account in the course of the risk assessment referred to in Art. 9a DDA.

Deficiency 6: *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*.

56. This deficiency has been addressed by amending Art. 14 (1) of the DDA in conjunction with Art. 24 (1) of the DDO. DNFBPs are only allowed to rely on third parties if they are satisfied that third parties i) has due diligence and record-keeping measures in place that meet the requirements set out in Directive (EU) 2015/849 and ii) the third party's compliance with the CDD and record keeping requirements is supervised in a way that is consistent with Directive (EU) 2015/849.

Deficiency 7: *No express obligation to keep business correspondence*.

57. This deficiency has been addressed by including an express reference to business correspondence in Art. 20 (1) DDA. The amended provision became effective as of 1 June 2018.

Deficiency 8: *No specific requirement that records need to be sufficient to permit the reconstruction of individual transactions*.

58. This deficiency has been addressed by Art. 20 (1) DDA in conjunction with Art. 2 (1) (q) DDA which specifies that "transaction-related" documents need to be sufficient to permit the reconstruction of individual transactions, including the amount and currency.

Deficiency 9: *Both for land-based and online casinos, in many instances the threshold for carrying out CDD on transactions is too high*.

59. Art. 5 (2) (f) of the DDA provides that CDD is now required when carrying out transactions to the value of 2,000 Francs[7] or more, irrespective of whether the transaction is carried out in a single operation or in several operations which appear to be linked.

Deficiency 10: *Land-based and online casinos are not required to identify and take reasonable measures to verify the identity of the beneficial owner in all cases required under Recommendation 12*.

60. This deficiency has been addresses by revising Art. 139 and 140 of the Casino Ordinance (CO) which have been aligned with the requirements set out in the DDA and the DDO. Land-based and online casinos are required to identify and take reasonable measures to verify the identity of the beneficial owner.

Deficiency 11: *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*.

61. The land-based and online casinos are required to determine whether a customer or beneficial owner is a politically exposed person based on Art. 11 (4) DDA in conjunction with Art. 138 (2) and 140 (3) Casino Ordinance (CO).

Deficiency 12 (Effectiveness): *Inconsistent application of due diligence measures across DNFBPs, with gaps in implementation of essential measures.*

62. To ensure a consistent application of these new CDD measures across all FIs, the FMA has issued the Communication 2015/7, which sets out the interpretation of the new rules related to the identification of the beneficial owner pursuant to the DDA and DDO. The FMA Communication contains numerous example cases to ensure a clear and consistent understanding by all FIs. It also specifies the type of information that the TCSPs are required to provide to FIs so that they can gain a better understanding of their customers and the beneficial owner(s). This measure ensures that FIs have full access to necessary information and documentation that is held by TCSPs.

Deficiency 13 (Effectiveness): *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.*

63. The ECDD measures that all reporting entities are required to apply on higher risk business relationships are now set out on a statutory level in Annex 2 of the DDA. Enhanced due diligence measures include: i) obtaining the consent of a member of the executive body before a business relationship is commenced or continued; ii) obtaining information concerning the commercial purpose of intended transactions or transactions that have been processed; iii) more frequent updates to the business profile; iv) enhanced on-going monitoring and more frequent checking of transactions by setting appropriate thresholds and appropriate transaction patterns which require enhanced scrutiny etc.

Deficiency 14 (Effectiveness): *Lack of emphasis on understanding the nature and purpose of the relationship, including understanding related legal structures and the relationship to the beneficial owner.*

64. The new FMA Communication 2015/7 requires DNFBPs to establish and record in detail the entirety of the legal structures and the relationship to the beneficial owner. This requirement is indirectly pointing to the need to understand the nature and purpose of the

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business relationship through the prism of the ownership. The authorities reported that emphasis is placed on the issue of nature and purpose of the business relationship on the occasion of training events and onsite inspections.

Deficiency 15 (Effectiveness): *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.*

65. Being a purely effectiveness item, it is difficult to assess progress based on a desk review. Authorities maintained that third party reliance is hardly used in practice as the DDA requires obliged firms to always and immediately obtain relevant copies of the identity verification documents and other documents required for CDD purposes. In the course of the regular onsite visit program the FMA has reviewed the mechanisms that DNFBPs (in particular TCSP) have in place to ensure compliance with the above-mentioned rules on third party reliance. In 2015 and 2016, less than 1% of the client files (business relationships) reviewed exhibited shortcomings with respect to the requirements related to third party reliance.

Recommendation 16

Deficiency 1: *There is no specific obligation for the compliance officer to be at a management level.*

66. According to Art. 22 (1) DDA reporting entities are now required to appoint a member of the executive body to be responsible for ensuring compliance with the DDA and the ordinances issued in association with it.

Deficiency 2: *Art. 11(6) of the DDA does not require enhanced CDD with respect to persons from (as opposed to in) high risk countries.*

67. This deficiency has been addressed through the adoption of Art. 11 (6) DDA according to which reporting entities are required to apply enhanced CDD to business relationships and transactions with customers or beneficial owners domiciled in high risk countries.

Deficiency 3: *No sufficient wide power to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries.*

68. The newly introduced Art. 11 (7) DDA provides that the Government shall provide more specific regulations concerning EDD through Ordinance. This may include stricter reporting or licensing requirements for business relationships and transactions with customers or beneficial owners from states with strategic deficiencies. This deficiency doesn't appear to have been fully addressed.

Deficiency 4: *The tipping-off prohibition does not apply to information related to a SAR.*

69. The newly adopted Article 19a (4) of the DDA stipulates that the tipping-off prohibition under Article 18b also applies to any information requested by or provided to the FIU, regardless of whether or not it is related to a previously filed SAR.

Deficiency 5 (Effectiveness): *Inadequate understanding of reporting requirements by DNFBPs.*

70. Being a purely on-site perceived deficiency, it is difficult to assess progress from a desk based review. The FIU reported continuous exchange of views with the DNFBP sector

and specific feedback given with regard to SARs filed. Furthermore, the FIU has raised awareness on the timeliness of reporting during both the national Due Diligence Days (day event on AML/CFT) as well as its recent annual reports.

Deficiency 6 (Effectiveness): *Low number of SARs, except for TCSPs.*

71. Apart from the awareness raising activities and feedback provided to the DNFBPs (see Deficiency 5 above) no other information was provided (such as statistics related to STRs filed by DNFBPs).

Deficiency 7 (Effectiveness): *Internal programs are not developed by all DNFBPs.*

72. The authorities reported that following the IMF/MONEYVAL evaluation, the FMA has instructed its inspectors and all mandated auditors to place particular emphasis on these issues during onsite visits. The authorities maintained that, with very few exceptions, the internal policies reviewed since the last evaluation visit were highly detailed and were drafted in a very useful way to assist their employees to comply with the requirements set out in the DDA and DDO. Inspections focused particularly on the risk categorisation of customers and the enhanced CDD measures foreseen in the internal policies. Overall, the risk assessment and management as framed in the policies appeared to be commensurate to the often higher risks faced in particular by the TCSP sector.

73. Another priority of the onsite inspections following the IMF/MONEYVAL evaluation in 2013 was the use of the internal audit function. Inspections focused particularly on the work carried out by the so called "investigating officer" (pursuant Art. 22 para. 1 DDA). In all cases reviewed an internal audit function was appointed, carrying out the functions described in Art. 35 DDO. The FMA was able to satisfy itself of the quality of conducted internal audits by reviewing in-depth the internal reports on conducted internal audits, which were in most cases very detailed and provided a comprehensive picture of the areas audited and the respective results (Art. 35 para. DDO).

Deficiency 8 (Effectiveness): *Training is not undertaken by all DNFBPs.*

74. The authorities informed that where in the course of an internal audit, AML/CFT compliance deficiencies were detected, employees were immediately made aware of such, and training sessions were held within DNFBPs in order to ensure a better understanding of the obligations in question.

Deficiency 9 (Effectiveness): *Audit functions to test compliance are not utilised by all DNFBPs.*

75. The authorities reported that the internal audit function was a priority in the supervisory actions taken by the FMA and the accredited auditors, and few deficiencies were noted in this respect. The full implementation of the MONEYVAL recommendations in this respect is to be determined in the context of the 5th round on-site visit.

Recommendation 33

Deficiency 1: *The system in place does not ensure adequate transparency on beneficial ownership of legal persons.*

76. To address this deficiency, in July 2016, the Liechtenstein Government started consultations for setting-up of central beneficial owner registers. No other steps have been reported so far.

Deficiency 2: *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.*

77. The authorities envisage addressing this deficiency with the legislative changes related to the creation the central register of beneficial ownership.

Deficiency 3: Powers of FMA to access information restricted to supervisory functions.

78. Under new Article 6 of the FIU Act, mechanisms for domestic information sharing between competent authorities have been specified. The Liechtenstein FIU can request and submit upon request any relevant information from/to any competent authority if deemed necessary. The limitations noted with regard to FMA's access to information on behalf of domestic third parties have become obsolete. However, the FIU access to additional information from the reporting entities remains indirect, and the effective information exchange is still to be assessed in the context of the next evaluation round. The law enforcement authorities also have direct access to beneficial ownership held by TCSPs.

Deficiency 4: *Measures in place for bearer shares are not adequate and commensurate to risk of ML.*

79. Art. 928 (3) Persons and Company Act has been amended to ensure that trust certificates must be registered certificates and therefore bearer certificates are generally impermissible. The amended Art. 928 (3) PGR entered into force at 1 January 2017.

Deficiency 5 (effectiveness): *Inadequate implementation of CDD requirements of DNFBPs and ineffective supervision; sanctions for non-compliance with registration/notification requirements are not dissuasive and not applied in practice; low number of inspections by the Office of Justice (OJ).*

80. For the purpose of consistent application of these new CDD measures across all FIs, the FMA has issued the Communication 2015/7, which sets out in great detail the FMA's interpretation of the new rules related to the identification of the beneficial owner pursuant to the DDA and DDO. The FMA Communication contains numerous example cases to ensure a clear and consistent understanding by all FIs. The FMA Communication 2015/7 also specifies the information details that TCSPs are required to provide to FIs so that they can gain a better understanding of their customers and the beneficial owner(s). This measure ensures that FIs have full access to necessary information and documentation that is held by TCSPs.

81. The consistency of CDD measures across FIs was also a particular focus of the onsite inspections. The FMA has placed particular emphasis on the consistent and more in-depth establishment of the source of funds and the source of wealth as well as the consistent identification and verification of beneficial owners. These topics were also key elements of numerous training events conducted by the FMA. Focused training events have been organised to outline the new rules on beneficial owner identification that came into force on January 1, 2016 and to elaborate on the content to the above-mentioned FMA Communication 2015/7.

82. In 2017 AML/CFT compliance with respect to 1,198 client files (business relationships) maintained by TCSPs was reviewed. Only approx. 3% of these client files exhibited shortcomings with respect to the beneficial owner identification and verification requirements. These few shortcomings were partly based on incorrect implementation of the new definition of beneficial ownership pursuant to Art. 3 (1) DDO.

83. Authorities reported that the OJ has reinforced the review process to check compliance of registration/notification requirements by updating internal instructions as well by improving cooperation with the Foundation Surveillance Authority.

Special Recommendation VIII

Deficiency 1: *No review to understand the activities, size and other relevant features of NPOs in Liechtenstein in order to determine the features and types of organisations that are at risk of being misused for FT.*

84. In the framework of the on-going National Risk Assessment the threats and vulnerabilities in relation to the NPO sector are currently being analysed. Up to date, no single relation between FT and a Liechtenstein NPO have been discovered or made aware to the authorities. No action taken to determine the features and types of organisations that are at risk of being misused for FT was reported.

Deficiency 2: *No periodic re-assessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities.*

85. The authorities reported that the FIU is in the process of analysing the FT risk of the most prominent NPOs in the country.

Deficiency 3: *Not all common-benefit entities are subject to supervision*.

86. The authorities (FIU and Foundation Supervisory Agency) have reached out to the Association of Liechtenstein Charitable Foundations (VLGS). Jointly with the VLGS, in August 2017, an information leaflet to inform the NPOs of the related FT risks has been developed and has been published in the FIU website. The authorities also participate in the associations outreach: on 30 August 2017, the FIU has delivered a presentation on FT at the annual VGLS event. Further events are planned for 2018.

Deficiency 4: *No measures in place to sanction violations of oversight measures or rules by NPOs or persons acting on their behalf.*

87. No progress has been reported on this item so far.

Deficiency 5 (Effectiveness): *Supervision of foundations does not cover FT issues.*

88. Authorities informed that the FSA is controlling directly and periodically about 180 foundations periodically in on-site visits at least every third year. None of the controlled foundations has shown a link to publicly known terrorist regions or organisations. All other foundations are annually audited by their auditors, which are appointed by the court.

Special Recommendation IX

Background note: in the progress report the Liechtenstein authorities made reference to the FATF MER Switzerland, December 2016: The Principality of Liechtenstein is associated with the Swiss customs territory, of which it is an integral part. Swiss customs laws and ordinances (such as the Ordinance of 11 February 2009) apply in the Principality of Liechtenstein and controls at the Austrian-Liechtenstein border are carried out by the Swiss Federal Customs Administration (AFD) (which does not carry out controls at the border between Switzerland and Liechtenstein). This lack of controls is based on the customs union treaty between both countries. Nonetheless, in the event of any suspected case of ML/FT, the competence to prosecute lies with the Liechtenstein authorities.

Deficiency 1: *It is not clear whether the disclosure system would apply in the case of shipment of currency through containerised cargo or to the mailing of currency.*

89. Liechtenstein authorities reported that Switzerland has been rated LC by the FATF with regard to R.32 in the December 2016 MER. The MER states that the criterion is met, with the exception of the Swiss-Liechtenstein border, where the Customs and Currency Union Treaty does not allow for controls.

Deficiency 2: *The conditions to seize are more restrictive/different than the FATF requirement to "stop or restrain".*

90. Authorities reported that Criterion 32.8 has been rated "Met" in the FATF MER of Switzerland.

Deficiency 3: *Sanctions are not proportionate, and they are not applicable sanctions in the case of legal persons.*

91. The authorities informed that on 7 June 2018, the Parliament has adopted the revised Art 36 of the Law on Police (which entered into force on 1 September 2018). The new legislation provides for an increased sanctioning regime: a fine of up to 30% of the value of the cash transported cross-border (para 2). This also applied to legal persons (para 3).

Deficiency 4 (Effectiveness): *Requirements not applied at the border with Switzerland, only one disclosure at the border with Austria, insufficient statistics, no sanctions, no specific training, no implementation of SR.IX best practices.*

92. This effectiveness deficiency cannot be assessed through a desk based review. The authorities made reference to the Swiss FATF report.

Conclusion

93. Since the fourth round on-site visit in June 2013, Liechtenstein has made significant efforts in addressing most of the identified deficiencies. The overall progress was already acknowledged by MONEYVAL at 51st Plenary Meeting in September 2016 and at its 56th Plenary in June 2018.

94. **Core Recommendations:** Substantial developments have been achieved by Liechtenstein on the implementation of the effectiveness concerns related to R.1. Cases of autonomous ML conviction were reported, and progress has been made in relation to the creation of jurisprudence on the burden of proof to establish the predicate offense. Regarding R.5, the Secretariat analysis concludes that the technical shortcomings have been addressed. The implementation of the effectiveness concerns must be verified by the authorities through supervisory actions.

95. **Key Recommendations**: On R.4, all the deficiencies identified in the 4th round MER have been addressed and this positively impacts on the technical compliance of R.26 and R.40. In addition to the "cascading effect" from R.4 and as described above, additional legislative measures have been taken in relation to both R.26 and R.40. Further on, Liechtenstein strengthened its legal and regulatory framework for freezing and confiscating terrorist assets, although still lacks written procedures for domestic designations. The effective application remains to be assessed in the next cycle.

96. **On Other Recommendations,** substantial progress has been noted especially with regards to R.12 and R.16 which follow closely the developments described under R.4, R.5 and R.26. On R.33 steps have been taken to enhance FMA's access to information, control the bearer shares and improve the implementation of CDD requirements of DNFBPs. In addressing the SR.VIII

shortcomings, the authorities took measures in the context of the NRA where the threats and vulnerabilities of the NPO sector are currently being analysed. The rest of the remediation measures are still under construction. In relation to SR.IX the authorities mostly referred to the special association with the Swiss territory and the FATF report on Switzerland. Improvements have been noted on the sanctioning regime. From a desk-based review it is difficult to assess effective implementation.

97. Overall, Liechtenstein has taken significant steps to remedy the deficiencies identified under the Core and Key Recommendations and to a certain level under the **Other Recommendations** rated PC in the 4th round MER. As described above, the progress achieved for the Core and Key Recommendations appears to be sufficient for the ratings to be considered at a minimum as equivalent to a Largely Compliant. In the view of that progress, the Secretariat proposes the Plenary to remove Liechtenstein from regular follow up process.

The MONEYVAL Secretariat

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