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Report on Fourth Assessment Visit

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 4th Assessment Visit was adopted by MONEYVAL at its 44th Plenary (Strasbourg, 31st March - 4 April 2014).

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ACRONYMS

AIFM	Alternative Investment Funds Mechanisms
AMA	Asset Management Act
AMC	Asset Management Companies
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
ARIS	Asset Recovery Intelligence System
BA	Banking Act
BL	Banking Law
BCP	Basel Core Principles
BO	Banking Ordinance
CC	Criminal Code
CDD	Customer Due Diligence
CO	Casino Ordinance
CPC	Criminal Procedure Code
CSP	Company Service Provider
DDA	Due Diligence Act
DDO	Due Diligence Ordinance
DNFBP	Designated Non-Financial Businesses and Professions
ECHR	European Convention on Human Rights
ECMA	European Convention on Mutual Assistance in Criminal Matters
EEA	European Economic Area
EFTA	European Free Trade Association
EGMLTF	Expert Group on Money Laundering and Terrorist Financing
EIA	E-Money Institutions Act
ESA	EFTA Surveillance Authority
EU	European Union
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FMA	Financial Market Authority
FMAA	Financial Market Authority Act
FSAP	Financial Sector Assessment Program
FSRB	FATF-style Regional Body
FT	Financing of terrorism
GA	Gambling Act
GDP	Gross Domestic Product
GNI	Gross National Income
GRECO	Group of States against Corruption
IAIS	International Association of Insurance Supervisors
ICA	International Center of Asset Recovery
IMA	Insurance Mediation Act
ISA	Insurance Supervision Act
ISA	International Sanctions Act
IUA	Investment Undertaking Act
KYC	Know your customer/client
LEG	Legal Department of the IMF
MAA	Market Abuse in Trading of Financing Instruments
MEF	Ministry of Economy and Finance

MER	Mutual Evaluation Report
MFA	Ministry of Foreign Affairs
MFD	Monetary and Financial Systems Department of the IMF
MOU	Memorandum of Understanding
ML	Money laundering
MLA	Mutual legal assistance
NPO	Nonprofit organisation
OGO	Online Gambling Ordinance
OJ	Office of Justice
OPP	Office of the Public Prosecutor
PC	Penal Code
PGR	Persons and Companies Act
PEP	Politically-exposed person
PSP	Payment Service Providers
PTA	Professional Trustees Act
ROSC	Report on Observance of Standards and Codes
SAR	Suspicious Activity Report
SBGC	Swiss Border Guard Corps
SNB	Swiss National Bank
SRO	Self-regulatory organisation
STR	Suspicious Transaction Report
TCSP	Trust and Company Services Provider
UN	United Nations Organisation
UNSCR	United Nations Security Council Resolution
WPRG	Auditors and Auditing Companies Act
WTO	World Trade Organisation

PREFACE

This partial re-assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Liechtenstein is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004 and following the MONEYVAL rules of procedures of the "fourth evaluation round" for the identification of the FATF recommendations that were subject to reassessment.

In line with these procedures, the evaluation team has therefore focused on how effectively the FATF's main and other significant recommendations have been implemented, namely Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 35, 36 and 40, and Special Recommendations (SR.) I, SR.II, SR.III, SR.IV and SR.V, which were subject to reassessment regardless of how they were rated in the third round. The assessment team also assessed compliance with and effectiveness of implementation of all the other FATF recommendations that had been rated noncompliant or partially compliant in the third round.

The assessment team considered all the materials supplied by the authorities, the information obtained onsite during their mission from June 12–24, 2013, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. Overall, the assessment team had over fifty meetings, more than half of which were with representatives of the private sector subject to the AML/CFT requirements, to gauge how effectively these requirements are being implemented by the private sector as well as by the authorities. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF) and experts acting under the supervision of the IMF. The evaluation team consisted of: Mr. Giuseppe Lombardo, Senior Counsel (Legal Department, team leader); Ms. Gabriele Dunker (IMF consultant), Messrs. Richard Pratt and Boudewijn Verhelst (IMF consultants), Mr. Thomas Iverson (United States Treasury), and Mr. Michael Stellini (MONEYVAL Secretariat). The assessors reviewed the institutional framework; the relevant AML/CFT laws, regulations, guidelines, and other requirements; and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Liechtenstein at the time of the mission or shortly thereafter. It describes and analyses those measures, sets out Liechtenstein's levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). This report was also presented to MONEYVAL and endorsed by this organisation on its plenary meeting of April 1, 2014.

The assessors would like to express their gratitude to the Liechtenstein authorities for their cooperation and great hospitality throughout the assessment mission.

EXECUTIVE SUMMARY

1. 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 nonresident 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, nonresident, 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.

1.1. 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**.**

1.2. 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.

1.3. 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 ongoing 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 TCPs 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

1.4. Legal Persons and Arrangements and Nonprofit 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 nonprofit 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. 180aPGR, 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.

1.5. 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.

2. GENERAL

2.1. General Information on Liechtenstein

30. The Principality of Liechtenstein is located between Switzerland and Austria and covers an area of 160 sq. km. (61.8 sq. miles), making it the fourth smallest state in Europe and the sixth smallest country in the world. A constitutional monarchy with a democratic and parliamentary system, the Head of State of Liechtenstein is His Serene Highness (HSH) Prince Hans-Adam II von und zu Liechtenstein who, in 2004, entrusted Hereditary Prince Alois to exercise his sovereign powers as his representative. Liechtenstein's parliament (Landtag) is comprised of 25 elected members who serve for four years. The parliament nominates the five member government, which is then appointed by the Prince for four-year terms. Following the last election in February 2013, a coalition government was formed by the two largest political parties. To be valid, each new law enacted by the parliament requires the consent of the Prince. The enactment of ordinances, where provided for under a law, does not require the consent of the parliament or the Prince as they are issued under the authority of the government.

31. Liechtenstein's GDP and gross national income (GNI) at current prices in 2010 were CHF 5.3 billion and CHF 4.5 billion, respectively. The majority of Liechtenstein's workforce is comprised of persons living abroad, 52 percent in 2011, a characteristic that renders per capita economic figures somewhat misleading. Gross national statistics for 2006–2010 are as follows:

Year	GDP (CHF billion)
2006	5.0
2007	5.5
2008	5.5
2009	4.9
2010	5.3

32. Liechtenstein's diversified economy is the result of rapid development since the early 1950s and has a significant emphasis on industrial production and financial services, which constituted approximately 39 percent and 27 percent of Liechtenstein's [2010] GDP,[1] respectively. Of particular note, Liechtenstein's financial services industry and trust and company service providers (TCSP) have proven attractive to nonresident business.

[1] http://www.llv.li/pdf-llv-as-national_economy_fliz2013.

33. With a population of just over 36,000 inhabitants, Liechtenstein is one of the smallest countries in Europe and the world. A third of the country's population is comprised of foreign nationals, predominantly from Switzerland, Austria, and Germany. The country is divided into eleven communities, with Schaan forming the largest community and Vaduz the second largest community and the capital. The country's unemployment rate in 2011 was 2.5 percent, an increase of 0.3 percent over the previous year. Liechtenstein's services sector, which is generally comprised of financial and insurance services, legal and tax consultancy, and trade, employed nearly 60 percent of the workforce in 2011, with the industrial sector employing nearly 40 percent, and the remainder employed in the agricultural sector.

34. Liechtenstein's industrial sector is heavily export focused, with the most products being exported to Switzerland, Germany, and the United States. The table below outlines the last five years' imports and exports of Liechtenstein goods (without Switzerland):

Year	Exports (CHF million)	Imports (CHF million)
2007	4.182	2.417
2008	4..245	2.461
2009	3.081	1.924
2010	3.325	1.882
2011	3.329	1.965

35. In 1923, Liechtenstein entered into a customs and monetary union with Switzerland, which remains in place to this day. The latter entails that the Swiss National Bank (SNB) is responsible for the entire "Swiss franc (CHF) currency area" (Switzerland and Liechtenstein), exercising associated monetary and currency policy functions.

36. From the perspective of economic and integration policy, Liechtenstein's relations within the framework of the European Economic Area (EEA) and the European Union (EU) play an important role in Liechtenstein foreign policy and economic framework. As an EEA member, Liechtenstein is fully subjected to the EU anti-money laundering (AML)/counter-financing of terrorism (CFT) framework. Additionally, Liechtenstein is party to international and multilateral organisations and agreements, including: (i) the Statute of the International Court of Justice, since 1950; (ii) the Helsinki Final Act of the Commission on Security and Cooperation in Europe, now Organisation for Security and Co-operation in Europe (OSCE), since 1975; (iii) the Council of Europe, since 1978; (iv), the United Nations, since 1990; (v) the European Free Trade Association (EFTA), full member, since 1991; and (vi) the World Trade Organisation (WTO), since 1995.

2.2. Structural elements for an effective AML/CFT system

37. Liechtenstein joined the partial agreement establishing Group of States against Corruption (GRECO) on January 1, 2010, after the closure of the first and second evaluation rounds. Accordingly, the country was subject to a joint evaluation covering the themes of the first and second rounds. This joint evaluation, published in October 2011, highlighted that the country has included combating corruption in its agenda; however, the assessment indicated that the country was in an "early stage when it comes to combating domestic corruption and there is over-reliance on the limited

size of the country (which is thought to prevent corruption)." In line with its findings, the GRECO report recommended an improvement of relevant preventive measures.

38. Liechtenstein submitted to a Phase 1 review performed by the Global Forum on Transparency and Exchange of Information for Tax (Global Forum), and later requested a supplemental review in consideration of legislative developments following the first review. The Global Forum considered Liechtenstein as having taken adequate steps to remedy the deficiencies highlighted in the Phase 1 Report adopted by the Global Forum in August 2011 and allowed the country to progress to Phase 2.

39. In an effort to stem the flow of illicit proceeds, Liechtenstein endorsed the UN Convention Against Corruption in December 2003 (ratified in 2010). Additionally, the country provides financial and technical support to the International Center for Asset Recovery (ICAR) in Basel.

40. Liechtenstein is not a member of the Organisation for Economic Co-operation and Development (OECD) and, therefore, is not party to the 1999 OECD Convention on Combating Bribery of Foreign Public Officials. Liechtenstein has signed (but not ratified) the Council of Europe Criminal Law Convention (ETS 173) and its Additional Protocol (ETS No. 191) on November 17, 2009. The country has not ratified or signed the Civil Law Convention on Corruption (ETS174).

2.3. General Situation of Money Laundering and Financing of Terrorism

Predicate offenses

41. As a small country with a moderate number of inhabitants favoring social control and law enforcement, the rate of domestic crimes is low. As a financial center with strict confidentiality rules, however, Liechtenstein is vulnerable to attract criminal proceeds or undeclared assets,[2] particularly tax related, predominantly of foreign origin, as a 2008 incident shows.[3] White collar crimes are typical predicates, both domestic and foreign, but lately the authorities have noticed an increase of

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[2] According to a study published by the World Bank/Stolen Asset Recovery Initiative (The Puppet Masters: How the Corrupt Hide Stolen Assets Using Legal Structures and What to Do About It, at http://star.worldbank.org/star/publication/puppet-masters), "Roughly 13 percent of the grand corruption investigations studied involved (in aggregate) the misuse of 41 foundations, *anstalten*, or other nonprofit corporate vehicle types that were identified as foundations in court documents. Approximately half originated in Liechtenstein, although this number was skewed by the scheme of Ferdinand and Imelda Marcos of the Philippines, which alone accounted for 15 *anstalten*." Although the cases referred to by the study are old, they are worth of note because of the use of foundations, which authorities still consider posing a risk of ML.

[3] The so-called "2008 Liechtenstein tax affair" is a series of tax investigations in numerous countries whose governments suspect that some of their citizens may have evaded tax obligations by using banks and trusts in Liechtenstein; the affair broke open with the biggest complex of investigations ever initiated for tax evasion in the Federal Republic of Germany.

corruption related cases, which they attribute to sharper law enforcement focus on this type of criminality abroad.

42. On domestic criminality, following statistics were provided:

Statistical Table 1. Statistics on domestic criminality (general)

Year	Investigations (cases)	Indictments/demand for a penalty (cases)	Convictions based on indictments/demands (cases)
2009	521	24/92	25/76
2010	566	32/141	22/95
2011	576	32/113	27/92
2012	533	19/87	14/65

43. In terms of major offenses prosecuted, particularly in the category of predicates to money laundering (ML), the figures show a preponderance of property and fraud offenses:

	Domestic crimes				
	Offenses	Prosecutions (indictments; more than three years imprisonment; cases)			
		2009	2010	2011	2012
	Sexual exploitation, including sexual exploitation of children	1	1	3	1
	Illicit trafficking in narcotic drugs and psychotropic substances	1	2	1	1
	Illicit trafficking in stolen and other goods			1	
	Corruption and bribery	1	3	1	2
	Fraud	5	6	6	6
	Environmental crime	1			
	Murder, grievous bodily injury		1	4	
	Robbery or theft	9	10	9	7
	Extortion	3			1
	money laundering		1	1	1
	other offenses	3	8	6	
		24	32	32	19

2.4. Money Laundering

44. The main attraction of Liechtenstein as a destination for domestic and foreign funds and investments lies in the broad range of financial services the country offers, in particular wealth management and private banking services. According to the authorities, large cash transactions are uncommon and generally mistrusted by the financial intermediaries. Payments to Liechtenstein accounts or withdrawals from such accounts are quite limited, which is typical for private banking. Liechtenstein corporate structures holding assets can also be used as a money laundering vehicle. The

main purpose of such corporate structures is the possession and administration of shares of another company, registered in a different jurisdiction (holding companies).

45. Banks continue to be exposed to ML risks as they offer a variety of products that can be abused for ML purposes. In Liechtenstein, the Designated Non-Financial Businesses and Professions (DNFBP) (TCSP and lawyers) sector is well established, and their corporate services face equal challenges. Increasingly, the insurance sector has developed over years, and a number of suspicious transaction reports (STRs) have been submitted that showed an increasing use of insurance products. On the other hand, 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 no casinos (yet) in Liechtenstein.

46. Based on the ongoing national risk assessment the Liechtenstein authorities identified, together with the appropriate countermeasures, a number of vulnerabilities typical of Liechtenstein as financial center, which are mainly:

- offering private banking/wealth management financial services, in particular to clients resident or active in countries with high levels of crime;
- offering multi-layered, complex corporate structures that favor protection of real ownership; and
- circumvention of international sanctions, both in respect of ML and FT.

47. The assessors complemented the analysis of these vulnerabilities with additional risk factors, described more in detail under the analysis of the relevant FATF Recommendations. In the light of the fight against ML and, to a lesser extent, FT, the use of legal structures governed by strict confidentiality (if not secrecy) rules represents significant challenges for the law enforcement and judiciary community, requiring in the first place an effective preventive system that it can rely on, together with an adequate arsenal of legal means to trace, identify, stop, and ultimately forfeit such criminal property.

48. Apart from the confidentiality issue, there are other factors weighing on a successful investigation, prosecution, and/or confiscation. A typical feature of the law enforcement approach in Liechtenstein is its reactive character to external initiatives and sources such as mutual legal assistance requests. The number of domestically triggered ML investigations is encouraging, but ML prosecutions are rare. The authorities explain the low number of prosecutions and absence of convictions as mainly due to the fact that in almost all cases the predicate activity occurs outside the Liechtenstein jurisdiction. There is still no policy of pursuing autonomous money laundering, presumably because of the deterrent effect of the high burden of proof on the specific predicate offense that seems to be required.

49. The Liechtenstein authorities endeavor to meet those challenges with appropriate legal means and a policy of actively pursuing asset recovery. The Liechtenstein criminal procedure legislation provides for a series of measures supporting them to that end, such as taking witness statements from the intermediaries, production orders, and seizure of documents, as far as the legal privilege does not

oppose these efforts. The *in rem* confiscation procedure is indeed widely used, showing encouraging results. The reliance on foreign factors and evidence is mitigated by the input of the FIU reports, which has resulted in prosecutions and convictions (although not for ML). The commitment and professionalism of the police and the judiciary authorities is undeniable.

50. The law enforcement results are shown in following statistics covering 2008–2012:

Statistics Table 2. Statistics of law enforcement results for 2008–2012.

	Investigations		**Prosecutions**		**Convictions (final)**	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**persons**
ML	61	> 61	2	3	1	1
FT	0	0	0	0	0	0

2009

	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**	**Cases**	**amount** (in EUR)	**Cases**	**amount** (in EUR)	**Cases**	**amount** (in EUR)
ML	50	>50	0	0	0	0	38	57.5 Mio	-	-	9	55.6 M.
FT	0	0	0	0	0	0	0	0	-	-	0	0

2010

	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**	**Cases**	**amount** (in EUR)	**Cases**	**amount** (in EUR)	**Cases**	**amount** (in EUR)
ML	58	>58	1	2	0	0	34	104 M.	-	-	9	194.35 M.
FT	0	0	0	0	0	0	0	0	-	-	0	0

2011												
	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**	**Cases**	**amount** (in EUR)	**Cases**	**amount** (in EUR)	**Cases**	**amount** (in EUR)
ML	55	>55	1	2	0	0	26	32.4 M.	-	-	4	4.3 M.
FT	1	1	0	0	0	0	0	0	0	0	0	0

2012												
	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**	**Cases**	**amount** (in EUR)	**Cases**	**amount** (in EUR)	**Cases**	**amount** (in EUR)
ML	56	>56	1	1	0	0	21	75.9 M.	-	-	6	4 M.
FT	0	0	0	0	0	0	0	0	0	0	0	0

51. No significant changes of ML patterns have been observed by the authorities since the last assessment, except the already mentioned increase in corruption related cases and that, recently, there have been indications that Liechtenstein may be used to attract dubious investments in gold and other precious metals as a reaction to the financial crisis. No such instances of money laundering have yet been identified, however. A more detailed description of risk and vulnerabilities identified by the evaluators can be found later on this section with specific reference to the financial and DNFBPs sectors as well as to legal persons and arrangements.

2.5. Terrorism financing

52. As the figures above show, there has only been one investigation in 2011, but no prosecutions and convictions for terrorism financing. The risk for terrorism financing is considered low by the authorities. The complex legal structures, the culture of confidentiality, the extensive legal privilege protection, and the beneficial ownership identification issues could result in terrorist-related assets going undetected. It is, however, a positive sign of the alertness of the sector that relevant (though external) information was picked up by the reporting system in one case. More in general, the few

STRs received by the Financial Intelligence Unit (FIU) related to suspected terrorist financing activities abroad and were communicated to the counterparts interested or involved. Otherwise, no relevant information came to the attention of the law enforcement authorities.

2.6. Overview of the Financial Sector

53. Liechtenstein has a substantial financial sector. It accounted for 9.1 percent of the workforce and 27 percent of GDP in 2010.[4] Its largest element is banking, mostly private banking, and business. In addition, Liechtenstein's financial sector includes asset managers, collective investment funds, life insurance, captive insurance, and pension funds.

54. As is the case with many financial centers, the banks dominate the sector in terms of financial assets managed. There are a total of 17 banks, which concentrate on private banking and wealth management services and manage total assets of CHF 117.7 billion at the end of 2012.[5] Banks also dominate the management of assets and collective investment schemes. Total assets fell from CHF 153.2 billion at the end of 2007, the reduction being partly due to the financial crisis and the strength of the Swiss franc. In addition, some interlocutors told the assessors that much business had left Liechtenstein following the moves made by the Liechtenstein authorities towards greater transparency and cooperation on tax matters. The same factors have affected profitability. Total bank profits, which reached CHF 861.6 million in 2007 had fallen to CHF 122.2 million in 2011, but recovered to CHF 388 million in 2012.The business is highly concentrated in that three major banks accounted for just under 90 percent of total assets at the end of 2012. There are seven banks which are subsidiaries of Swiss or Austrian institutions, but the three major banks are domestically owned. The banks accounted for the employment of 2,044 staff (full-time equivalent) in 2011.

55. Asset management companies provide portfolio management and investment advisory services. After a period of rapid growth, the number of such companies has stabilised at just over 100 (109 at the end of December 2012). In 2006, the number of such companies was 28. Total client assets at the end of December 2012 were CHF 23.52 billion. A total of 436 people were employed by asset management companies. The total number of collective investment funds (known as investment undertakings in Liechtenstein) was 557 in December 2012, accounting for total assets of CHF 37.2 billion, having been just 276 and 20.6 billion respectively in 2006. These collective investment funds were being managed by 20 fund management companies.

56. The insurance business in Liechtenstein consists of 41 companies, 22 of which provide life insurance, 14 non-life, and 5 captive reinsurances. Total premium income was CHF 4.2 billion in 2012, of which 79 percent was from life insurance. The insurance sector offers its services primarily to Italy (accounting for 58.2 percent of premium income), Germany (16.9 percent) and Switzerland

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[4] Source: Office of Statistics: http://www.liechtenstein.li/uploads/media/pdf-llv-as-liechtenstein_in_figures_2013.pdf

[5] Source: FMA report on the financial center, 2012 edition.

(7.4 percent). The sector employed 601 staff at the end of 2011. The sector is supported by 49 insurance intermediaries.

57. At the end of 2012, 29 pension schemes offered occupational pensions (pillar two) with CHF 4.35 billion in capital and technical provisions. Six pension funds were licensed to provide private pensions (pillar three).

	Number	**Assets under management (billion CHF)**	**AML/CFT + prudential Supervisor**
Banks	17	117.7	FMA
Asset management companies	109	23.52	
Fund management companies - Active fund management companies - Active fund management companies (exempted from DDA)[6]	 2 18	 0.55 36.65	
Life Insurance Companies	21	premiums: 3.3	
Life Insurance brokers	49	-	
Liechtenstein Postal service (payment services)	1	-	
E-Money Institution	1	-	
Financial institutions not subject to the FATF Recommendations (December 2012)			
	Number	**Assets under management (billion CHF)**	**Prudential Supervisor**
Non-life insurers and reinsurers	19	premiums: 0.9	FMA

[6] Management companies not keeping unit accounts or issuing physical units. The question of their exemptions is discussed in the context of Preventive Measures.

Pension schemes	29	4.35	
Non-life insurance brokers	16	-	

	Number of branches abroad	Number of subsidiaries abroad	Branches of foreign banks in the country	
			Number	Supervisor
Banks	4[7]	54[8]	0	FMA
Life insurance companies	5	0	0	
Asset management companies	5	2	0	

58. The table below sets out the types of FIs that can engage in the financial activities that are within the definition of "financial institutions" in the FATF 40+9.

Type of financial activity	**Type of financial institution that performs this activity**	**AML/CFT + prudential Supervisor**
1. Acceptance of deposits and other repayable funds from the public (including private banking)	Banks Postal Service AG	FMA
2. Lending (including consumer credit; mortgage credit; factoring, with or without		

[7] One branch in Hong Kong, the remaining three in the EU (UK, Ireland and Austria).

[8] 20 subsidiaries in Switzerland, 15 in the Caribbean (Cayman Islands and BVI) 10 in the EU (UK, Ireland, Luxembourg, Germany and Austria), 4 in Hong Kong, 2 in Singapore, and 1 each in USA, Japan and UAE. All but three subsidiaries and 2 branches are from the largest three banks.

recourse; and finance of commercial transactions (including forfeiting))	Banks
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	Banks
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Banks Postal Service AG
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Banks Electronic money institutions
6. Financial guarantees and commitments	Banks
7. Trading in: (a) Money market instruments (checks, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	Banks Fund management companies
8. Participation in securities issues and the provision of financial services related to such issues	Banks Fund management companies
9. Individual and collective portfolio	Banks, Asset management

management	companies	
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks Fund management companies Asset management companies	
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Banks Fund management companies Asset management companies	
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	Life insurance companies Life insurance intermediaries	
13. Money and currency changing	Banks Foreign exchange offices	

59. The following types of FIs can obtain a license and are allowed to operate financial activities in Liechtenstein:

Banks and finance companies

60. In accordance with the Banking Act (BA), dated October 21, 1992, as amended, only banks can collect deposits, provide safekeeping services, and issue electronic money; make off-balance sheet transactions, manage securities issuance, and provide securities services. The BA also provides the regulatory framework for investment firms, which are allowed to render investment services and ancillary services on a professional basis (however, no investment firm has been licensed so far). The BA defines and regulates the activities of bank and investment funds and entrusts the FMA with supervisory powers. Banking regulations are stipulated in the Banking Ordinance (BO), dated February 22, 1994, as amended. The BA specifically addresses AML/CFT issues and requests banks and investment firms to set up internal guidelines to ensure adherence with customer due diligence obligations under the Due Diligence Act (DDA) (Annex 5 BO, Section 1.3.6.).

61. Domestic banks may perform banking activities or provide investment services in an EEA member state either through branches or directly by virtue of the free movement of services. Conversely, banks and investment firms licensed and supervised in EEA member states may perform, respectively, banking and securities-related activities in Liechtenstein either through a branch or directly by virtue of the free movement of services (Art. 30d BA). Such institutions are subject to the DDA.

62. The Liechtenstein Postal Service provides financial services. It accepts from the public and offers some payment services on behalf of Swiss Post and offers money transfer services on behalf of Western Union. The money remittance business provided by the Postal Service as an agent for Western Union amounts to approximately 2,500 transactions per year. The average transaction amounts to CHF 400. Based on the internal rules of the Postal Service, enhanced due diligence is carried out as soon as four linked transactions are carried out per month (irrespective of the value) or if the value of linked transactions is above CHF 5,000 per month. Money remittance services have recently been started by a business acting as an agent for Moneygram. This undertakes very limited business as yet. Money remitters are also covered by the DDA.

Asset management companies

63. Pursuant to Art. 3 of the Asset Management Act (AMA), which became effective on January 1, 2006, asset management companies (Investment firms within the meaning of Directive 2004/39/EC) provide or arrange to provide on a professional basis asset management services in the form of:

- portfolio management;
- investment advice;
- reception and transmission of orders concerning one or more financial instruments; and
- investment research and financial analysis.

64. Asset management companies (AMC) cannot accept or hold assets that belong to third parties (Art. 3.3 AMA) and cannot hold a trustee, lawyers, patent attorney, or auditor license (Art. 6.1.l AMA). The assets managed are in the form of holdings in financial instruments and must be deposited in a bank. At the time of the assessment, AMCs fell within the scope of application criteria of the DDA. However, in practice they are subject to the DDA only for STR reporting, but not due diligence requirements, as all AMCs in Liechtenstein operate on the basis of a limited power of attorney for client accounts, and outside the context of a high risk scenario, all of them carry out simplified CDD scenarios under Art. 10 of the DDA.

65. Asset management companies registered and licensed in Liechtenstein may conduct their business in an EEA member state through a branch or in form of cross-border services, or in a third country, after demonstrating to the FMA that they hold, or are not required to hold, a local license (Arts. 33 and 36 AMA).

66. Asset management companies registered and licensed in an EEA member state may conduct their business in Liechtenstein through a branch or in form of cross-border services (Art. 34 AMA). Asset management companies or asset managers whose registered office or residence is in a non-EEA member state must obtain a license from the FMA before operating in Liechtenstein (Art. 37 AMA).

Investment undertakings

67. The Investment Undertakings Act (IUA), dated May 19, 2005, dated September 1, 2005, as amended, governs entities (funds) which raise assets in the form of units marketed to the public, for the purpose of collective capital investment, and have them managed by a management company for the joint account of the investors. Both the investment undertaking and the management company must hold a license from the FMA. Depositary functions are carried out by a bank holding a domestic license or by a domestic branch of a bank licensed in an EEA member country. Investment undertakings fall within the scope of application of the DDA under Art. 3. However, investment undertakings which do not maintain share accounts or distribute shares are exempted from the scope of the DDA under Art. 4. At the time of the assessment only two licensed investment undertaking in Liechtenstein did not qualify under this exemption and were thus subject to the DDA.

68. If so authorised by the FMA, a fund management company may in addition manage individual portfolios and other assets, such as pension funds or investment foundations (Art. 24.3.a IUA). Subject to FMA authorisation, it may delegate some of its responsibilities to third parties, domiciled in Liechtenstein or abroad, but operating under its effective monitoring and oversight (Art. 25 IUA).

69. Units of domestic investment undertakings can be marketed in an EEA member state:

- for transferable securities, providing that they conform to the Directive 85/611 requirements or this has been approved by the FMA (Art. 93 IUA); and
- "for other values or for real estate," providing that this has been approved by the FMA (Art. 89 IUA).

70. Units of an EEA member state investment undertaking can be marketed in Liechtenstein, providing that they conform to the Directive 85/611 requirements. A FMA license is required to market units of an EEA investment undertaking which are not in conformity with the Directive 85/611, as well as units of a third country investment undertaking (Arts. 93 and 94 IUA).

Insurance undertakings

71. Undertakings that provide direct insurance or reinsurance are governed by the Insurance Supervision Act (ISA), dated December 6, 1995, as amended. Insurance undertakings must hold a license for each class of insurance they provide (Art. 12 ISA) and are prohibited from conducting noninsurance activities (Art. 20 ISA).

72. Insurance undertakings which are located and licensed in Liechtenstein may conduct business in an EEA member state through an establishment or cross-border services (Art. 26 ISA); in other states, they must hold a local license (Art. 27.b ISA). Insurance undertakings which are located and

licensed in an EEA member state or in Switzerland may engage in direct insurance business in Liechtenstein by way of an establishment or cross-border services (Art. 28 ISA and Direct Insurance Agreement between Liechtenstein and Switzerland, 1996). Insurance undertakings which have a head office in a third country must obtain a license in Liechtenstein (Art. 31 ISA) and operate through a branch managed by a general agent.

E-Money Institutions

73. Institutions that provide e-money services are governed by the E-Money Act and supervised by the FMA. Electronic money as defined in article 3 (a) of the E-Money Act is spent or managed, provided that: (i) if the device cannot be recharged, the maximum amount stored in the device is no more than 150 francs; or (ii) if the device can be recharged, a limit of 2,500 francs is imposed on the total amount spent or managed in a calendar year, except when an amount of 1,000 francs or more is redeemed in that calendar year by the bearer as referred to in Art. 10, paragraphs (paras.) 2–4 of the E-Money Act. There is one e-money institution in existence in Liechtenstein.

Risks and Vulnerabilities

74. The business model of Liechtenstein's financial center focuses on private banking and wealth management and is mostly nonresident business. 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. The term asset protection refers to the protection of assets from liabilities arising elsewhere.

75. This business falls squarely within that which FATF Recommendation 5 cites as examples of high risk customers:

- Nonresident customers;
- Private banking;
- Legal persons or arrangements such as trusts that are personal assets holding vehicles; and
- Companies that have nominee shareholders or shares in bearer form.

76. All of these examples are present in much of the business conducted in Liechtenstein.

77. The organisation of the financial business in Liechtenstein creates risks and vulnerabilities. Typically, a foreign customer will be the beneficial owner of a foundation, company or trust established by a professional trustee in Liechtenstein. Although the term professional trustee is used in Liechtenstein, in fact, the professional is only rarely a trustee of a trust as such and is more often a member of the council of a foundation or a company director as well as fulfilling other duties, all of which justify the use of the term "professional trustee" in a Liechtenstein context. Henceforth the term TCSP will be used.

78. The TCSP will be responsible for forming the legal person or arrangement on behalf of the client. In many cases, the client will be using the services of similar professionals in other countries

and may have a series of such legal persons and arrangements established in different countries and subject to the nominal control of many professionals in different countries. Although most of them may well be subject to obligations with regard to AML/CFT, many of them will not be subject to a licensing regime ensuring that they are fit and proper persons.

79. Within this context, the Lichtenstein TCSP has a clear obligation to conduct due diligence on their customer (as is described in detail in this report). However, the more complex the structure, the more remote the TCSP will be from the true client and the greater the risks that the person the TCSP believes to be the client is not, in fact, the true beneficial owner.

80. Moreover, once the TCSP in Liechtenstein has established to his or her satisfaction that the beneficial owner is a bank, with which the TCSP opens an account on behalf of the customer, is entitled to rely on a signed declaration by the TCSP, without being required to conduct further enquiries.

81. The TCSP sector in Liechtenstein is subject to due diligence obligations, but not subject to a full licensing or prudential supervisory regime. As a result, although there must be at least one person in the TCSP who has a license as a professional trustee in Liechtenstein, the TCSP business as a whole and the owners and controllers are not all necessarily subject to any screening by the authorities. They may not, therefore, all be persons who could pass a "fit and proper" test in a full prudential regime. Moreover, because of resource constraints, the authorities' only subject the TCSPs to onsite inspections every three years unless there is a reason for increasing the frequency. Those inspections (like those for FIs) are by a mandated audit firm. The inspections are paid for by the TCSPs, rather than the authorities themselves.

82. The effect of this structure is that any weaknesses in the TCSP sector can rapidly spread through the financial system. The risk of compliance failures and the consequential vulnerability to abuse by money launderers, fraudsters, and others is heightened, not simply because the kind of business is that which the FATF methodology cites as an example of high risk business, but also because the TCSP sector is the least regulated element of the system—having no comprehensive licensing and prudential regime and AML/CFT inspections only every three years.

83. In addition to the risks posed by the structure of the financial system, the changing nature of the business that is available to the Liechtenstein sector also creates a risk.

84. Private sector interlocutors have indicated that, until relatively recently, their primary business was assisting clients in other countries to minimise their tax payments and that, in the past, techniques to minimise taxes may have strayed beyond tax avoidance into tax evasion. The scope for such business has been reduced by the international attention that has been focused on offshore centers and the quantity of business has suffered as a result.

85. The authorities adopted the Lichtenstein Declaration in 2009. This was a pledge to transparency, especially in tax matters. It has been followed by the signing of tax information exchange agreements with various countries.[9] Following this declaration, there has been some reduction in assets under management and the number of new companies, or other legal entities and arrangements has declined.

86. The assessors understand from the authorities that Liechtenstein has been developing a strategy for sustaining its financial center in the future. The key elements of the strategy are to enhance competitiveness by:

- Relying on the existing competitive advantages, in particular the ability to provide for the structuring and administration of wealth using Liechtenstein legal entities and arrangements;
- Ensuring that the legal framework for such sectors as insurance and alternative investment funds remains in line with international standards and attractive to foreign investors;
- Emphasising the strengths of Liechtenstein as a country with a stable political system, a high degree of legal certainty, membership of the EEA and the use of the Swiss franc;
- Exploiting its ability to act quickly to meet international standards and customer needs; and
- The adoption of international standards of transparency while preserving legitimate secrecy and asset protection.

87. The authorities are wise to seek to create a financial center based on principles of transparency and adoption of international standards. Like other offshore financial centers that have undergone similar transformations, Liechtenstein faces the risk that its previous reputation as a center devoted to secrecy will continue to attract those who seek to abuse secrecy and the various legal forms available in the jurisdiction.

88. The assessment team considers that there are a number of areas where action is necessary to reinforce the defenses. However, these observations should be set against recognition of the progress Liechtenstein has made and the strengths it now has.

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[9] The OECD shows Liechtenstein as having 24 tax information agreements in April 2013, of which 19, including those with Germany, U.S., and Luxembourg, meet OECD standards. The authorities have stated that the position has changed, so that there are 34 tax information exchange agreements and double taxation agreements, 28 of which are in full compliance with the standards. The agreement with Austria has been revised and will enter into force on January 1, 2014. Negotiations with Switzerland to revise the present DTA are underway.

2.7. Overview of the DNFBP Sector

89. All DFNBPs that exist in Liechtenstein are designated as such by FATF and are subject to the obligations set forth in relevant laws and regulations, and are supervised by the FMA. DNFBPs in the country offer products and services that are integrated into and complementary to those offered by traditional financial institutions.

90. The categories of DNFBPs, as defined in the AML/CFT Law are trustees; trust companies; persons authorised to act as company directors for Liechtenstein registered firms, but who do not have the right to form companies; lawyers; law firms; legal agents; auditors; audit firms; real estate brokers; dealers in goods; and casinos, with a catch-all provision to cover other persons engaged in financial services.

DNFBPs subject to the DDA (December 2012)		**AML/CFT Supervisor & Licensing**[10]
Trustees	91	FMA
Trust Companies	287	
Persons with Certificate under Art. 180a PGR	535	
Lawyers	190	
Law Firms	29	
Auditors	33	
Audit Firms	24	
Real Estate Brokers	7	
Dealers in Goods	4	
Casinos	0	
Other Persons Subject to Obligations	29	

[10] The FMA does not have licensing power with respect to: Persons with certificate under Art. 180a PGR; Real Estate Brokers; Dealers in Goods; or Other Persons Subject to Obligations.

Trustees and Trust Company Service Providers (TCSPs)

91. TCSPs in Liechtenstein include trustees and trust companies as well as persons with a certificate under Art. 180a PGR situated in Liechtenstein or any other EEA member state. TCSPs establish various types of legal entities (e.g. foundations, companies, and trusts) in Liechtenstein on behalf of a customer, who can be natural persons or authorised representatives of legal entities or legal arrangements, which are commonly non-residents. The established legal structures often form part of a broader legal structure consisting of legal entities or arrangements set up in different parts of the world. It is common practice for the TCSP to retain nominal control of the established legal entity or arrangement and to act on its behalf. In this capacity, TCSPs establish relationships with FIs and/or DNFBPs in Liechtenstein on behalf of the legal entity or arrangement.

92. Trustees under the Professional Trustees Act are licensed by the FMA and are covered under the DDA to the extent they pursue activities under Art. 7, paras. 1 (a), (b), (e), or audit activities under (f), or activities under Art. 7(2) of the Professional Trustees Act. Pursuant to the Professional Trustees Act, the FMA may issue two types of licenses. The first license category is granted on the basis of the applicant's passing of the trustee exam. The second type of license is issued based on the applicant's license under the Lawyers Act, and the passing of an additional trustee exam. Holders of a license in the first category are permitted to carry out a wide range of services on a professional basis, as listed under Art. 7, para. 1:

- The forming of legal persons, companies and trusteeships for third parties, in the license holder's own name and for the account of third parties, and related interventions with the authorities and administrative offices;
- Assuming board mandates in accordance with Art. 180a PGR;
- Assuming trusteeships;
- Financial and business counseling;
- Tax counseling; and
- Accounting and inspections, unless such activities are reserves to auditors and auditor companies.

93. All activities except financial and business counseling are covered by the DDA.

94. The second category of license is more restrictive in that it only permits the carrying out of activities under the first and second bullet points, and the DDA applies in relation to both of these activities.

95. Licensed trustees are subject to disciplinary powers of the Court of Appeal, which may take action on its own initiative or based on information received from the public. Disciplinary measures include reprimand, a fine of up to CHF 50.000, and permanent or temporary withdrawal of the license. Trustees licensed under the law of a foreign country also have to obtain a license from the FMA under the Trustees Act and are subject to the DDA to the same extent as domestic trustees.

96. In addition to licensed trustees, the DDA also covers within its scope:

- Holders of a certification under Art. 180aPGR, to the extent that they act as partner of a partnership, or a governing body of general manager of a legal entity on the account of a third party, or carry out a comparable function on the account of a third party. A certification under this Article may be obtained by a Liechtenstein lawyer who is domiciled in Liechtenstein and is licensed as a lawyer, legal agent, trustee, auditor, or government recognised business qualification, or a Liechtenstein resident working for such a person;

- Natural and legal persons to the extent that they provide a registered office, business address, correspondence, or administrative address and other related services for a legal entity on a professional basis;

- Natural and legal persons to the extent that they act as a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with EEA law, or deemed by the FMA to impose equivalent international standards, or to the extent that they provide the possibility for another person to carry out such function; and

- Any natural and legal person to the extent that they contribute to the planning and execution of financial or real estate transactions for their clients concerning the buying and selling of undertakings or real estate; the managing of client money, securities or other assets; the opening or management of accounts, custody accounts, or safe deposit boxes; the organisation of contributions necessary for the creation, operation or management of legal entities; or when acting as a partner of a partnership or a governing body or general manager or a legal entity on the account of a third party or carrying out comparable function on the account of a third party.

97. Art. 2 of the DDA defines "legal entity" to include legal arrangements. As indicated above for purposes of this report, any reference to a "TCSPs" encompasses also any natural or legal person carrying out any of the activities specified in the bullet points listed above.

Lawyers and Law Firms

98. Lawyers, similar to trustees, are subject to the DDA and supervised by the FMA to the extent that they carry out "financial transactions" as defined and which generally comports with the term "transactions" as it is presented in the FATF standards, including Recommendation 12. Liechtenstein further divides the universe of lawyers into residents and nonresidents. Nonresident lawyers in Liechtenstein are further divided into two groups: lawyers from EEA member states who become certified and registered in Liechtenstein, and EEA lawyers who practice as an apprentice and are not registered. Despite these distinctions, each type of lawyer is subject to the DDA and supervised by the FMA if it carries out financial transactions. According to the 1992 Law on Trustees (Art. 1.3), lawyers can obtain a limited trustee license by special examination with one year of practical work.

The law also allows lawyers who were authorised to form companies before that date to continue to do so (Art. 54.1 and 2).

99. Lawyers and law firms entered in the list of lawyers or list of law firms under the Lawyers Act as well as legal agents as referred to in Art. 67 of the Lawyers Act are registered with the FMA in the list of lawyers or law firms, and are covered under the DDA to the extent they provide tax advice to their clients, or assist in the planning or execution of transactions for their clients concerning:

- The buying and selling of undertakings or real estate;
- Managing of client money, securities or other assets;
- Opening or management of accounts, custody accounts, or safe deposit boxes;
- Organisation of contributions necessary for the creation, operation or management of legal entities; or
- Establishment of a legal entity on the account of a third party or acting as a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party of carrying out a comparable function on the account of a third party.

100. The Lawyers Act permits a license holder under the Act to provide legal advice on a professional basis, and to represent parties on a professional basis in all judicial and extrajudicial public and private matters.

101. Lawyers under the Lawyers Act are subject to disciplinary powers of the Court of Appeal, which may take action on its own initiative or based on information received from the public. Disciplinary measures include reprimand, a fine of up to CHF 50,000, and permanent or temporary withdrawal of the license.

102. "Legal agents" as referred to under Art. 3 of the DDA are an extremely small (two persons) class of practitioners who were so registered in February 1958, or were granted a subsequent permit before the Act on Lawyers entered into force in 1992.

103. Accountants are not expressly referenced but Art. 3(v) of the DDA sets out a catch-all provision for "any natural or legal person to the extent that they contribute to the planning and execution of financial or real estate transactions for their clients" concerning any of the activities that would cover lawyers, i.e. the buying and selling of undertakings or real estate; the managing of client money, securities, or other assets; the opening or management of accounts, custody accounts, or safe deposit boxes; the organisation of contributions necessary for the creation, operation, or management of legal entities; or the establishment of a legal entity on the account of a third party or acting as a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party of carrying out a comparable function on the account of a third party.

<u>Auditors and Audit Firms</u>

104. Auditors in Liechtenstein fulfill two important, yet separate, roles. In certain circumstances auditors perform audit functions for various customers, including entities in the financial and industrial sectors. In other circumstances, auditors investigate and examine other financial institutions and DNFBPs for compliance with applicable obligations on behalf of the FMA, this role will be discussed under relevant supervision-related recommendations.

105. Regarding the role of auditors in which they establish customer relationships, any natural and legal person licensed under the Auditors Act and Auditing Companies as well as audit offices subject to special legislation require are licensed by the FMA and are subject to the provisions of the DDA. Pursuant to Art. 7 of the Auditors Act, a license under the act permits the carrying out of the following activities on a professional basis:

- Account and statutory audits; and
- Advice in the area of finance and accounting, taxes, financing, organisation and information technology.

106. In addition, the DDA covers within its scope any other natural and legal person who, on a professional basis, accepts or keeps third-party assets or assists in the acceptance, investment, or transfer of such assets or who, on a professional basis carries out external statutory and other audits.

Real Estate Brokers

107. Real estate agents are not required to obtain a license from the FMA, but need to have a commercial license issued by the *Amt fuer Volkswirtschaft*. Real estate agents are covered by the DDA and supervised by the FMA to the extent that their activities cover the purchase or sale of real property.

108. The real estate market in Liechtenstein is very small and highly regulated. Liechtenstein citizens, and certain few noncitizens who become eligible through an annual lottery or other means, are allowed to purchase a limited number of properties in Liechtenstein (one house and one apartment or two apartments, in addition to one house in certain less developed areas in the mountains). As such, individuals purchasing property, generally through their real estate agents, must demonstrate to the land registry that the purchaser of the property is qualified to do so.

Dealers in Goods

109. Natural and legal persons trading in goods on a professional basis are covered by the DDA and supervised by the FMA to the extent that payment is made in cash in an amount of CHF 15,000 or more, whether the transaction is executed in a single operation or in several operations which appear connected. This industry in Liechtenstein is very small, with four covered entities. The small industry, combined with the minimal covered activity (i.e. single or aggregate transactions greater than CHF 15,000) results in the risk associated with such institutions as low.

Casinos

110. Casino and providers of online gambling games under the Gambling Act must obtain a license by the Liechtenstein government and are subject to the DDA. At the time of the onsite visit, there had been no licenses issued under the Gambling Act. For online casinos, the authorities stated that there was a moratorium for the issuance of licenses until at least 2014. This is based on the fact that there is a case pending at the European Court of Justice on subsidised online gambling, which may have an impact on whether or not Liechtenstein will issue such licenses in the future. The authorities stated that even if there was a decision to issue online gambling licenses, there was no expectation that many applications for such licenses would be received, as the licensing requirements under the Gambling Act are very strict compared to those in other jurisdictions.

111. The authorities indicated that the government took a decision to issue only one license for a land-based casino under the Gambling Act, and would reassess the demand for further land-based casinos in 2016. The authorities received two applications for the land-based casino license and had issued one license in 2012. However, this decision was appealed, and the case is now pending before the Constitutional Court. It is possible that the license will be re-issued in 2013, which would allow for a casino to become fully operational no sooner than 2016.

Other Persons Subject to Obligations

112. Art. 3.1 DDA further provides that any other natural or legal person who conducts financial transactions as defined in Art. 4 DDA on a professional basis is covered by the law.

Risks Emanating from the DNFBP Sector

113. The DNFBP sector in Liechtenstein is particularly high risk given the services offered and the types of customers served, which are often nonresident, intermediated, and can be components of existing complex legal structures. To mitigate these risks, all participants in the DNFBP sector should understand and implement the appropriate preventive measures, including enhanced due diligence policies and procedures. Any shortcomings in understanding or implementation of the requisite measures decrease the effectiveness of the overall framework and allow the heightened risks emanating from the DNFBP sector to go unmitigated.

114. Interviews conducted by the assessment team demonstrated that the effectiveness of mitigating the risks emanating from the DNFBP sector is diminished by shortcomings in the implementation and understanding of the necessary measures, along with a general lack of appreciation for the high risk nature of the DNFBP sector.

115. Additionally, shortcomings with respect to supervision of the DNFBP sector further diminish the effectiveness of the framework. Issues related to supervision include: the absence of proper licensing requirements in certain circumstances, including with respect to trustees; conflicting legal provisions with respect to the ability to obtain information; the use of mandated audit firms for compliance examinations; supervision processes and cycles that are not risk-sensitive; lack of an off-site supervision regime; and the imposition of very few sanctions. It must be noted that, according to MONEYVAL procedures, Recommendation 24 has not been reassessed as part of this assessment.

116. Generally, the risks emanating from the DNFBP sector impact the entire framework in Liechtenstein due to the central role of DNFBPs, specifically TCSPs, and the reliance placed upon them by financial institutions and other DNFBPs. These risks are further amplified by a general and residual tendency for industry and other participants to prioritise confidentiality.

2.8. Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

117. Liechtenstein has a very liberal regime concerning the creation of legal persons and arrangements. For a description of the types of legal persons and arrangements that can be established or recognised by the Liechtenstein legal framework, see the 2007 MER and the table and description under Recommendations 33 and 34.

118. 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 extend it also 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, introduced an obligation to keep shareholders registers at the registered seat of the company. As discussed in the analysis, issues remain with regard to the adequacy, accurateness and timely access to information on beneficial ownership.

119. The table below (source: Office of Justice) provides the total number of registered/deposited entities, broken down per type of entity as of 12/31/2012 (also showing the figures of 2011 and new entries/deletion):

Legal form	By 12/31/2011	New entries	Deletions	By 12/31/2012
Sole trader	614	30	100	544
Collective partnership (Kollektivgesellschaft)	19	1	0	20
Joint Stock Company (AG)	6,573	266	583	6,256
Limited liability company (GmbH)	114	24	11	127
Co-operative	19	1	2	18
Commercial or non-commercial association	232	26	4	254
Registered foundation	1,806	110	107	1,809

(Stiftung)				
Limited partnership (Kommanditgesellschaft)	18	3	0	21
Limited partnership with share capital (KomAG)	0	0	0	0
Registered trust (eingetragene Treuhänderschaft)	2,764	212	310	2,666
Establishment (*Anstalt*)	11,486	222	1,125	10,583
European joint-stock company (SE)	5	0	0	5
European economic interest association (EWIV)	0	1	0	1
Trust Enterprise (Trust reg.)	2,018	15	222	1,811
European Cooperative	1	0	0	1
Subsidiary of a enterprise with domicile within EEA	5	4	0	9
Subsidiary of a enterprise with domicile outside of EEA	95	3	3	95
New deposited foundations	32,425	534	4‘144	28,815
Deposited trust	197	3	29	171
Total all legal entities	**58‘391**	**1‘455**	**6‘640**	**53‘206**

120. The use of trusts is not as extensive as that of some other legal entities, such as foundations or *Anstalten*, as the table below shows. Moreover, many more trusts are registered than are deposited. This is shown by the following table showing legal arrangements at the end of 2012:

Legal Entity	Total
Registered trust	2,666
Deposited trust	171

Source: Office of Justice

Risk and vulnerabilities

121. The number of registered or otherwise deposited entities is quite high, although there has been a decrease, since 2011. In the authorities' view, this is mainly attributed to Liechtenstein's having signed several agreements concerning the exchange of information on tax matters with the U.S. and the EU and on its greater transparency. There have certainly been significant improvements on this front from the previous assessment, including with regard to legal persons and arrangements. There are however still significant challenges in the effective implementation and some inherent vulnerabilities and weaknesses in the system chosen by Liechtenstein to prevent the unlawful use of legal persons and arrangements by money launderers and, possibly, terrorist financiers. Authorities have identified the creation of complex legal structures as posing a risk, and assessors concur with this finding. There are indeed elements of risks inherent in the types of institutions that can be created in Liechtenstein, such as deposited foundations and *Anstalten* (see analysis of R33), 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 (use of agents to establish these entities, identification of beneficial owner, and beneficiaries in bylaws that are not subject to registration or deposit with the OJ and may be not always maintained by TCSP, especially in the case of foreign introducers). The issues of effectiveness noted with regard to trustees' implementation of CD requirement and their supervision by the FMA, add to the risk of ML/FT abuse that legal persons and arrangements still pose for Liechtenstein.

2.9. Overview of Strategy to Prevent Money Laundering and Terrorist Financing

AML/CFT Strategies and Priorities

122. The Liechtenstein AML/CFT system relies on the following pillars:

- **Conformity with International Standards**: As a MONEYVAL and EEA member, Liechtenstein is committed to implementing international standards in fighting money laundering and terrorist financing. This approach is complemented by the government's strategy to fight international tax crimes and corruption. In the Liechtenstein Declaration of 2009, Liechtenstein has committed itself to apply the global OECD standards of transparency and exchange of information. In the area of fighting corruption, Liechtenstein is a party to the UN Convention against Corruption and a member of GRECO.

- **Dedication of sufficient resources to combat ML and FT**: Since 2000, the government has systematically and continuously increased the authorities' capacities to combat ML and FT.

- **Proactive approach**: Proactive AML/CFT action is an integral aspect of the Liechtenstein approach, in particular through the FIU. The FIU has increased its capacities to build up a strategic analysis function.

- **International cooperation**: Liechtenstein is an international financial center and therefore depends on close and effective cooperation with foreign countries at all levels, be it FIU, the Office of the Public Prosecutor, the police, the Supervisor, the Office of Justice (Central Authority for Mutual Legal Assistance), or other competent authority. Liechtenstein has become a Schengen member, and participates in international fora for combating money laundering and terrorist financing, such as the EU FIU platform, FATF, MONEYVAL, and the Egmont Group.

- **Domestic cooperation**: The authorities, as well as representatives from the private sector cooperate and collaborate where needed. A special AML/CFT Working group (PROTEGE) has been set up, chaired by the FIU, to coordinate all ML/FT related efforts. Its members are the Directors or Senior Officials of all agencies involved.

123. The effectiveness of the measures is under regular review by the authorities concerned and the AML/CFT Working Group PROTEGE. The process for a National Risk Assessment has been initiated, simultaneously reviewing the appropriateness of the existing measures. The AML/CFT Task Force has been tasked to propose measure to implement the new FATF standards in Liechtenstein law, taking into consideration the recommendations from the fourth round IMF/MONEYVAL assessment and the new fourth EU AML/CFT Directive, such as the inclusion of serious tax offenses as predicate offenses.

The Institutional Framework for Combating Money Laundering and Terrorist Financing

124. The following Liechtenstein authorities play a role in the AML/CFT effort, to some extent or another.

Ministry of Finance

125. The Ministry of Finance is responsible for all issues relating to finances, budgets, and taxes, as well as the financial center policy, including countering the abuse of the financial center for criminal purposes. Within the Ministry, the FIU is responsible for AML/CFT policy and coordination issues while the Office for International Financial Affairs is responsible for the policy with regard to international cooperation in tax matters and for the financial market strategy.

Ministry of Justice

126. The Ministry of Justice is responsible for the areas of civil law, including the Law on Persons and Companies, criminal law, execution, estate, and bankruptcy law, procedural law, data protection, mutual legal assistance, extradition and transit, enforcement of sentences, and foundation law. They

include updating the existing legal order by preparing and managing legislative texts and legislative amendment processes, such as those arising from Liechtenstein's membership in the EEA.

Ministry of Interior

127. The Ministry of Interior exercises authority over the Liechtenstein National Police, whose organisation and functions are governed by the 1989 National Police Act, i.e., conducting criminal investigations, including in relation to money laundering in terrorism financing, executing assignments at the instruction of government offices, administrative authorities and courts provided by law, and supporting the prevention of accidents and crime. It is also legally in charge of the cross-border cash transportation control.

Ministry of Foreign Affairs

128. The main responsibilities of the Ministry of Foreign Affairs include the preparation and treatment of all government matters relating to international agreements and treaties, bilateral and multilateral cooperation, European and international cooperation, international organisations and conferences, and diplomatic and consular relations. In the area of AML/CFT, the ministry is involved in the ratification of relevant treaties, and in the implementation of UN and EU sanctions. The ministry is also responsible for humanitarian aid.

AML/CFT Working Group.

129. A national AML/CFT working group, created on January 15, 2013, is responsible for coordination and cooperation in all areas relating to proliferation, FT, and ML (PROTEGE). The working group is chaired by the FIU, with the participation of the FMA, national police, public prosecutor, Office of Justice, Office for International Financial Affairs, Foreign Office, Courts, and Tax Administration, all represented by their directors or delegates. Prior to January 2013, three distinct working groups existed that covered AML/CFT issues with one of them specifically focusing on terrorist financing.

Financial Intelligence Unit (FIU)

130. The FIU, also known under its acronym EFFI, is an administrative analytical unit within the Ministry of Finance. It is the central office receiving and analysing information in order to identify indications of ML, predicate offenses of ML, organised crime, and FT. It is also the office to which SARs are submitted, analysed, and disseminated. It has two departments, operational and strategic analysis and a designated staff for international affairs. The Head of the FIU chairs the AML/CFT working group PROTEGE and the country’s MONEYVAL delegation.

Law enforcement agencies including police and other relevant investigative bodies

131. As stated above, the Liechtenstein National Police is in charge of the criminal investigations, including ML and FT. One section (the Economic Crime Unit) is specifically dealing with financial and economic affairs. Organisationally, the National Police is structured into the Safety and Traffic Division, the Criminal Police Division (who deals with the ML/TF matters), and the Command

Services Division. The Chief of Police is the head manager of the National Police. He is supported by the Chief of Staff, who is responsible for the administration and also serves as the head of the Command Services Division. The Chief of Police and the division heads constitute the Executive Staff of the National Police. The National Police counts about 120 officers and staff.

Prosecution authorities including specialised confiscation agencies.

132. The responsibility of the Office of the Public Prosecutor is to prosecute, indict, and argue the indictment before the competent court ex officio with respect to all offenses that have been reported to the office. Investigative magistrates of the Princely Court have the authority to issue legal orders, such as production orders and search and arrest warrants, as required to investigate ML and FT.

133. The Office of the Public Prosecutor safeguards the interests of the state in the administration of justice, in particular with respect to the administration of criminal justice and mutual legal assistance in criminal matters. In the exercise of its responsibilities, it is independent of the courts. The Office of the Public Prosecutor reviews all reports of punishable acts it receives and ex officio decides to on the prosecution or other measures. If there are sufficient grounds for initiation of proceedings, the Public Prosecutor submits an application for initiation of an investigation or a writ of indictment. If not, the case is filed away. The Office of the Public Prosecutor represents the state before the courts.

134. In the absence of a specialised confiscation agency or criminal asset bureau, the management of confiscated assets falls under the general authority of the government.

Customs service

135. There is no customs department in Liechtenstein. All customs duties are taken up by the Swiss Customs under the Treaty of December 3, 2008 between the Principality of Liechtenstein and the Swiss Confederation. The cross-border cash transportation control at the Liechtenstein borders, genuinely the responsibility of Customs authorities, is performed by the Liechtenstein National Police.

Financial Market Authority (FMA) Supervision

136. As a supervisory authority, the FMA supervises the financial market participants in the Liechtenstein financial center in order to ensure the stability of the FIs and financial market as well as the protection of clients. In case of violations the FMA takes the necessary measures to safeguard the interests of the clients and the reputation of the financial center. The FMA also deals with cases in which activities subject to a license are pursued without the appropriate license.

Regulation

137. The FMA ensures implementation of international standards and participates in the preparation of financial market laws on behalf of the government. To further specify laws and their implementing ordinances, the FMA also issues guidelines and communications.

External relations

138. The FMA is represented in all relevant supervisory organisations at the global and European level. With its mission as an equivalent supervisory authority, the FMA contributes to ensuring market access for Liechtenstein financial intermediaries. At the national level, the FMA maintains close contact with business and professional associations.

Office of Justice

139. Within the Ministry of Justice, the Office of Justice (presently three lawyers) is responsible for preparing legislative proposals, the Land Registry (Cadaster), and the Commercial Registry. It is the Central Authority in Mutual Legal Assistance context.

The Commercial Registry

140. The Commercial Registry is a public register ensuring the legal certainty of commercial transactions by disclosing arrangements under private law, especially liability and representation arrangements, entered into by the natural and legal persons operating in this sphere. It registers businesses, foundations, establishments (*anstalten*), and other commercial entities. It functions as a depository of documents relating to foundations, trusts/settlements, and other instruments. Furthermore, it registers public authorisations and clarification of names and business names, performance of the legally required announcements, various official acts such as monitoring compliance with various requirements (submission of balance sheet, etc.), changes of domicile, and reviews. The registered data have force of evidence.

Approach Concerning Risk

141. The overall approach to risk is led by the PROTEGE Working Group. As noted above, this has begun the process of developing a National Threat Assessment. PROTEGE is examining alternative strategies, identifying any gaps in its current data set, holding "brainstorming" sessions to assess risk, and attending international workshops to consider appropriate strategies for developing National Threat Assessments in comparable countries.

142. More generally, the authorities have reinforced this general approach to risk by implementing the Third EU Money Laundering Directive and following its approach closely.

143. In advance of the development of a National Threat Assessment, the PROTEGE Group has identified key risk areas within the jurisdiction. It has informed the assessors that it considers private banking and wealth management—a key element of the financial services business—to be high risk. It has concluded that risks are higher still where customers are resident in countries that have only recently become a market economy—such as Asia—and where customers are resident in high crime countries. The jurisdiction has had no instances of terrorism and considers that there is a relatively low risk of terrorist financing.

144. The PROTEGE Group has concluded that the main risk in terms of the traditional analysis of money laundering methodologies is at the layering and integration stages. There is little risk in terms of the initial placement.

145. The PROTEGE group also seeks to keep abreast of trends in the development of business models that might create risk and of trends in criminal behavior. In the latter context, it has identified an increasing incidence of economic crime, investment fraud, and market abuse. The FMA has been able to provide assistance and cooperation to foreign authorities on these matters (and this was confirmed by third-party countries in their response to the assessors' enquiry). There has also been some increase in the instance of corruption proceeds.

146. In response to the assessment of risks that the PROTEGE has developed thus far (in advance of the full National Threat Assessment), the main focus has been on preventative measures imposed by the FMA. As noted in the description of supervision below, the DDA presupposes a risk-based approach by stating, for example, that the frequency and intensity of inspections is based in part on the risk posed by an institution. Moreover, the DDA requires institutions subject to its provisions to adopt a risk-based approach, for example with respect to the monitoring of transactions.

147. In the discussion of supervision below, it is noted that, in practice, the FMA has not yet fully adopted a risk-based approach to supervision. Inspections of FIs are conducted annually and neither the frequency nor intensity is substantially altered by reference to AML/CFT risk. Moreover, the allocation of resources within supervision does not appear to be related to the AML/CFT risk of the different businesses for whose supervision different businesses are responsible. Guidance given to FIs and DNFBPs is primarily concerned with the interpretation of the detailed and mandatory provisions in the DDA and the Due Diligence Ordnance (DDO). While the guidance does provide advice on a risk-based approach, more detailed advice on implementation of such an approach and on meeting the requirements of the DDA and DDO would encourage flexibility and innovation and allow diversity in implementation.

148. At this stage, therefore, although there are some elements of a risk-based approach, it is clearly some way from being fully developed. Nevertheless, the authorities are seeking to conduct a full National Threat Assessment and, as noted above, are considering appropriate methodologies for developing their risk-based approach within the context of the adoption of the EU Money Laundering Directives.

Progress since the last IMF/WB Assessment or Mutual Evaluation

149. Please refer to the analysis of the individual recommendations for a description of the progress since the last Mutual Evaluation vis-à-vis the shortcomings noted in the 2008 MER.

3. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

3.1. Criminalisation of Money Laundering (R1 rated PC in third round MER)

3.1.1. Description and Analysis

Summary of the 2007 MER factors underlying the ratings and recommendations and progress since the last MER

150. The last assessment noted following deficiencies:

- no offenses in the categories of environmental crimes, smuggling, forgery, and market manipulation were predicate offenses for money laundering;
- no criminalisation of self-laundering in relation to converting, using, or transferring criminal proceeds;
- no prosecution possible for money laundering where the offender has been convicted for the predicate offense; and
- association or conspiracy of two persons to commit money laundering is not criminalised.

151. Art. 165 of the Liechtenstein Penal Code (PC) criminalising money laundering activity has undergone some significant changes in the wake of the third round mutual assessment, in an effort to accommodate the comments and recommendations made at that occasion. In essence, this includes completion of the list of predicate offenses and removal of the clause restricting the punishment of laundering activity committed by the author of the predicate offense. Conversion, transfer, and use by the author of the predicate offense are now covered, as well as association to commit money laundering.

Legal Framework:

- Article 165 Penal Code (PC);
- Article 5 and 7 PC;
- Articles 12 and 15 PC;
- Article 17, para. 1 PC;
- Article 64, para. 1.9 PC;
- Article 278, para. 2 PC.

Criminalisation of Money Laundering (c. 1.1—Physical and Material Elements of the Offense):

152. Art. 165 PC now criminalises money laundering as follows (amendments in *italics)*:

> "(1) anyone who hides asset components originating from a crime, a misdemeanor under Arts. 223, 224, 278, 278d, or 304 to 308, *a misdemeanor under Arts. 83–85 of the Foreigners Act,* a misdemeanor under the Narcotics Act, *or an infraction under Art. 24 of the Market Abuse Act,* or

conceals their origin, in particular by providing false information in legal transactions concerning the origin or the true nature of, the ownership or other rights pertaining to, the power of disposal over, the transfer of, or the location of such asset components"

"(2) anyone who appropriates or takes into safekeeping asset components originating from a crime, a misdemeanor under Arts. *223, 224, 278,* 278d or 304 to 308, *a misdemeanor under Arts. 83–85 of the Foreigners Act,* a misdemeanor under the Narcotics Act,[11] *or an infraction under Art 24 of the Market Abuse Act,* whether merely in order to hold them in safekeeping, to invest them, or to manage them, or who converts, realises, or transfers such asset components to a third party."

153. The previous assessment already found in Art. 165PC complying with the physical elements as stated in the Vienna and Palermo Convention, i.e., concealment (hiding), acquisition, possession, management and use (conversion, realisation or transfer).

154. Although Article 165 PC does not contain specific terminology on the moral element *(mens rea)*, it is clear that at a minimum the *"willful"* standard applies. Liechtenstein criminal law (Art. 5 PC) knows three forms of "*mens rea*" characterising an offense "willfully," "intentionally," or "knowingly." When a criminal provision does not specify the mental element required, such as in Art. 165, paras. 1 and 2PC, the act is deemed "willful," which is an even lower standard than the required "intention" according to the terminology used in the relevant Conventions.

The Laundered Property (c. 1.2):

155. As before, according to Art., 165, para. 4PC, the assets ("*asset components*") originate from a criminal offense if the offender has either obtained the assets himself through the offense or for its commission or if the value of the originally obtained or received assets are embodied in it.

156. Disregarding the reference to assets obtained to commit an offense (which is not a proceed but an instrumentality), the ML offense relates to all kinds of property, either obtained directly from the offense or indirectly through substitution (*"embodied")*. This would also cover the interests and investment yields derived from the criminal proceeds.[12]

Proving Property is the Proceeds of Crime (c. 1.2.1)

157. While proof of the predicate offense does not technically require a conviction, in the absence of jurisprudence on ML cases, it is still unclear what level of proof would satisfy the courts. The authorities refer to the common law concept of "beyond reasonable doubt," which as a legal term is foreign to the civil law tradition and as such is no criterion for the civil law judge, who is fully sovereign in assessing the value of the evidence (Art. 205CPC). Proving an (unspecified) illicit origin

[11] "Committed by another person" was deleted.
[12] See third round MER for legal commentary on "*Vermögensbestandteile"*

appears insufficient for the Liechtenstein courts, because the predicate list approach requires the identification of the proceeds originating offense in any case as a constitutive element of the ML offense. For the Liechtenstein courts, a formal proof of a specific predicate offense will likely be necessary, as in the case of confiscation *in rem* (discussed under Recommendation 3).

158. As a consequence, considering that in reality most of the predicate offenses are committed outside Liechtenstein, there is a tendency to (over)rely on the foreign criminal investigation or prosecution to deliver sufficient certainty or proof enabling a ML prosecution in Liechtenstein.

The Scope of the Predicate Offenses (c.1.3):

159. Predicate offenses to ML fall under two categories:

- all crimes, that are intentional criminal offenses punishable by life imprisonment or a term of more than three years (Art. 17, para. 1PC);
- designated misdemeanors (penalty less than three years).

160. The deficiencies in the list of designated predicate offenses, as highlighted in the previous assessment, were addressed by the inclusion in Art. 165PC of the misdemeanors of forgery (Arts. 223 and 224PC) and market manipulation (Art. 24 Market Abuse Act).[13] The environmental offenses covered by Arts. 180, para. 2; 181a, para. 2; and 181c, para. 2PC have been elevated to crimes in aggravating circumstances. As for smuggling, reference is made to specific Swiss Customs legislation applicable under the 1923 Customs Treaty by public notice.

161. To be noted that a certain category of tax offenses that fall beyond the list of designated predicate offenses, i.e. VAT fraud exceeding 75,000 francs affecting the budget of the European Communities, has been introduced as predicate criminality for ML (Art. 165, para. 3aPC). Other categories of serious tax crimes such as large and organised income tax fraud are no predicate offense to ML.

162. The designated predicate offenses are now fully covered as follows:

- Participation in an organised criminal group and racketeering: Arts. 277, 278a, and 278b PC;
- Terrorism, including terrorist financing: Arts. 278b, c, and d PC;
- Trafficking in human beings and migrant smuggling: Arts. 104, 104a, and 217PC;
- Sexual exploitation, including sexual exploitation of children: Arts. 200, 201.2, 204, 205, 206, 208.3, 212.3PC;

[13] Amended by LGBI, 2010, n° 119.

- Illicit trafficking in narcotic drugs and psychotropic substances: All misdemeanors in the 1983 Narcotics Act are predicate offenses for money laundering, including the sale or procurement of narcotics, the financing of narcotic trafficking or the procurement of financing of narcotics;

- Illicit arms trafficking: Art. 60.3 Arms Act, Arts. 33.2–34 and 35 Swiss Act on War Material: Arts. 27.2, 28.1, 29.1 (LI) Act on War Material;

- Illicit trafficking in stolen and other goods: Art. 164.4PC: Art. 14.2 Swiss Act on the Control of Goods with Civilian and Military Application (GKG), Art. 21.2 (LI) KGG;

- Corruption and bribery: Arts. 153.2, 304–308PC;

- Fraud: Arts. 147, 148, 148a.2, 153.2, and 156PC;

- Counterfeiting currency: Arts. 232, 233.2, and 234PC;

- Counterfeiting and piracy of products: Art. 60.2. Law Concerning Brand Protection;

- Environmental crimes: Arts. 180, para 2; 181a, para 2; and 181c, para 2PC;

- Murder, grievous bodily injury: Arts. 75, 76, 77, 78, 79, 85, 86, 87, 92.3, 96.2, and 321 PC;

- Kidnapping, illegal restraint and hostage taking: Arts. 99.2, 100, 101, 102, 103, 104, and 106 PC;

- Robbery or theft: Arts. 128.2, 129, 130, 131, 132.2, 133.2, 142, and 143PC;

- Smuggling: Art. 14, para. 4 Swiss Federal Act on Administrative Criminal Law of March 22, 1974;

- Extortion: Art. 144 and 145PC;

- Forgery: Arts. 223 and 224PC;

- Piracy: Art. 185 and 186 PC (air piracy); and

- Insider trading and market manipulation: Arts. 23.1 and 24 2006 Market Abuse Act.

163. The predicate offense of piracy (Art. 185PC) is about air piracy and no other provision covers naval piracy as such, which is a very important issue. This apparent inconsistency is countered by the authorities with the argument that the criminal acts pertaining to naval piracy are all covered in the

PC and that prosecution would take other (designated) offenses (theft, robbery, extortion, terrorism, murder, grievous bodily harm, e. a.) to satisfy the predicate requirement of Art. 165PC.[14]

Threshold Approach for Predicate Offenses (c. 1.4):

164. The Liechtenstein approach is partly threshold, partly list based. As said, predicates to ML are all crimes (i.e. punishable by life or more than three years imprisonment) and a series of designated misdemeanors (less than three years imprisonment).

Extraterritorially Committed Predicate Offenses (c. 1.5):

165. As long as Liechtenstein has jurisdiction over the ML activity itself *ratione loci*, it is irrelevant where the predicate offenses are committed, presuming the facts constitute a domestic predicate offense. Liechtenstein even assumes jurisdiction over the money laundering conduct in another country if the predicate offense has been committed in Liechtenstein (Art. 64, para. 1.9PC). Art. 65, para. 3PC finally provides that, if there is no penal power at the place where the criminal act was committed (such as the Antarctic or high seas) it is sufficient that the offense is punishable in Liechtenstein.

Laundering One's Own Illicit Funds (c. 1.6):

166. A major improvement since the previous assessment is the abolition of para. 5 of Art. 165 PC prohibiting the prosecution for money laundering of a person who had been punished for participation in the predicate offense.[15] While in the previous assessment, Art. 165, para. 2, was found to exclude self-laundering conduct, this is no longer the case in its present formulation where it refers to the conversion, use, and transfer of criminally obtained assets. Criminalisation of self-laundering in respect of "appropriation and taking into custody" is justifiably precluded by the fundamental *"ne bis in idem"* principle (the commission of the predicate offense infers the acquisition and taking into possession of the assets).[16]

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[14] Reference is made to the Government Report to the Parliament on the ratification of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, On the authority of Government Reports as interpretation source: Constitutional Court, U 06.02.2006, StGH 2005/45; U 03.09.2012, StGH 2012; Supreme Court B 25.05.2012, 12 RS.2012.47.

[15] Repealed by LGBI 2009, n° 49.

[16] The fundamental character of the "*ne bis in idem*" (double jeopardy) principle is common to all civil law traditions. It is enshrined in Art. 4 of the Seventh Additional Protocol to the EHRC, as ratified by Liechtenstein, and therefore has equal standing as a constitutional provision. The principle has to be applied ex officio. For Schengen member countries the same principle is also enshrined in the Schengen agreement. The principle is also reflected in various provisions of the Penal Procedure Code and in the jurisprudence of the Constitutional Court.

Ancillary Offenses (c. 1.7):

167. All relevant ancillary offenses are presently covered. Since criterion 1.7 has been clarified by the FATF in respect of the association/conspiracy aspect (association with or conspiracy to), the criticism in the previous assessment regarding the absence of criminalisation of conspiracy by two persons to commit money laundering can no longer be sustained. Conspiracy in the common law sense not being an offense in a continental (civil) law-based criminal law tradition such as in Liechtenstein, the international standards (including the relevant conventions) alternatively require the criminalisation of association to commit money laundering. Such association is criminalised pursuant to Art. 278, para. 2PC.

Additional Element—If an act overseas which do not constitute an offense overseas, but would be a predicate offense if occurred domestically, lead to an offense of ML (c. 1.8):

168. Art. 64PC lists a series of offenses that fall under the Liechtenstein jurisdiction if committed in a foreign country, even if that conduct is not criminalised in that country. The list includes money laundering if the predicate has been committed in Liechtenstein, but does not cover all predicate offenses to money laundering according to Art. 165PC.

Statistics (R.32):

169. The following statistics on judicial follow-up were provided by the Liechtenstein authorities:

Statistics Table 3. Judicial Follow-up.

2008

	Investigations		Prosecutions		Convictions (final)	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**
ML	61	> 61	2	3	1	1
FT	**0**	**0**	**0**	**0**	**0**	**0**

2009

	Investigations		Prosecutions		Convictions (final)	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**
ML	**50**	**>50**	**0**	**0**	**0**	**0**

	Investigations		Prosecutions		Convictions (final)	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**
FT	**0**	**0**	**0**	**0**	**0**	**0**

2010

	Investigations		**Prosecutions**		**Convictions (final)**	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**
ML	**58**	**>58**	**1***	**2**	**0**	**0**
FT	**0**	**0**	**0**	**0**	**0**	**0**

*Prosecution closed/suspended. One defendant was convicted for the predicate offense (drugs) in Sweden, whilst the whereabouts of the second defendant remain unknown. The criminal proceeds transited over Liechtenstein back to Sweden.

2011

	Investigations		**Prosecutions**		**Convictions (final)**	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**
ML	**55**	**>55**	**1***	**2**	**0**	**0**
FT	**1**	**1**	**0**	**0**	**0**	**0**

*Prosecution closed. Acquittal for ML. Predicate offense (fraud) in Germany (no prosecution).

2012

	Investigations	**Prosecutions**	**Convictions (final)**

	Cases	Persons	Cases	Persons	Cases	Persons
ML	**56**	**>56**	**1***	**1**	**0**	**0**
FT	**0**	**0**	**0**	**0**	**0**	**0**

*Self laundering and breach of trust acquittal for the predicate offense and the ML aspect.

170. Roughly 90 percent of the ML investigations were triggered by an FIU report to the Public Prosecutor, who is legally obliged to start an enquiry whenever there is indeed sufficient suspicion. The remainder was initiated by the police predominantly based on information received through Interpol or after a criminal complaint.

171. The statistics still show no convictions, apart from one case in 2008, when on July 15, 2008 the Court of Justice sentenced a German citizen to eight month imprisonment for third party ML after the predicate offender was convicted for fraud in 2005. The penalty was however suspended subject to a probation period of one year.

172. Out of effectiveness considerations the Prosecutor General pursues a policy of waiving his jurisdiction and transferring the prosecution to the foreign authorities with jurisdiction over the predicate offense or who are already investigating.

Year	Prosecutions transferred to a foreign jurisdiction	
	Total	Money Laundering
2009	18	7
2010	22	5
2011	31	10
2012	14	3

Effective implementation

173. The 2009 amendments to Art. 165PC took into account almost all third round recommendations and brought the criminal ML provision broadly in line with the international standards. They extended the list of predicate offenses "beyond the call of duty" covering VAT fraud beside all designated predicate offenses (reservation made for naval piracy), removed the legal obstacles to the criminalisation of self-laundering, and broadened the scope of the ML offense to capture conversion, transfer, and use of the criminal assets. Technically, there are, however, still some deficiencies with more or less relative impact on the effectiveness of the repressive approach.

174. The object (*corpus*) of the ML offense, i.e. the criminal assets either obtained directly from the offence or indirectly through substitution (*"embodied")* (Art. 165.4PC), may raise the question if this includes any income derived from the immediate and substitute proceeds, such as interests and dividends. According to the doctrine quoted above (see footnote 13), these items are also covered. Also, in the confiscation area the terminology of Art. 20bPC explicitly providing for forfeiture of the predicate offense proceeds as object of the money laundering offense, ("involved in money laundering"), makes it clear that derived income is covered.

175. Immediately notable from the statistics is the substantial number of investigations that only very exceptionally result in a domestic ML prosecution. There are a number of reasons for putting these figures in perspective. Not all intelligence from the FIU (accounting for circa 90 percent of the investigations) can be turned into evidence justifying further proceedings. Also, investigations can give cause to prosecution for other offenses than ML. Finally, there is the criminological policy to waive the own jurisdiction in favor of that of the foreign country that is dealing with the predicate offense or other related offenses.

176. The authorities explain the low number of indictments and (no) convictions being due to the fact that in almost all cases the predicate offense is committed abroad and the connection to Liechtenstein is relative (single transaction, use of a front company or other services by a financial intermediary). In most cases, according to the authorities, the financial intermediaries act in good faith, and in some cases negligent, but not intentional; while in very serious cases there is an involvement in the predicate offense, which occurs abroad. They consider the ML investigations a deterrent by themselves even if not resulting in indictments and convictions in Liechtenstein.

177. Consequently, transferring prosecutions to foreign judicial authorities is a frequent occurrence, not limited to money laundering cases (see statistics). Authorities insist on the effectiveness of this policy, which is a view the assessors only partially share. If proceedings in respect of the predicate offense are or have been initiated elsewhere, it makes sense to join the two judicial actions together. There are downsides to this predominantly reactive approach however: the results in terms of convictions and asset recovery are completely out of the Liechtenstein authorities' control and depend on the diligence or even interest of the foreign judiciary. It is no coincidence that one of the complaints voiced by the judicial authorities is the lack of effective response by some foreign jurisdictions, even to the extent that no action is taken against the criminal assets. Also, this practice does not promote the development of Liechtenstein's own jurisprudence on the matter.

178. The previous assessment already recommended to develop jurisprudence on money laundering as an autonomous offense to attenuate the (over)reliance on external factors. Although in the past years some prosecutions have been initiated, they all have been closed without a conviction, bar one that has ended in a (mild) conviction in 2008. A common factor to all prosecutions is the narrow link to the predicate offense proceedings and the burden to establish the predicate offense, which the authorities' state has to be done beyond a reasonable doubt. While there is still no jurisprudential answer in ML cases to the essential question of what level of proof on the (foreign) basic offense suffices for an ML conviction outside the existence of a predicate conviction (not legally required, but of course highly appreciated), the conditions required by the courts in the case of *in rem* confiscation (need to establish specifically predicate offense) suggest a conservative approach by the courts. Moreover it is not clear why Liechtenstein, as a civil law system would require a

"beyond reasonable doubt" standard, which is a common law feature. It is understood that, as a consequence of the list-bound character of Art. 165PC, at a minimum the identification of the predicate offense figuring in the list (crimes and specific misdemeanors) is required, but questions remain on the required level of proof. The result is that the concept of ML as an autonomous offense still has not made its entrance in the Liechtenstein jurisprudence. The list-bound aspect of the ML offense increases the overall level of the burden of proof as it does not allow a furnishing of proof based on an (unspecified) illegal origin of the assets, as is possible in jurisdictions with an all crimes ML legal approach. Internationally there is a tendency to make the scope of the ML offense as wide as possible, including fiscal offenses, which is frequently one of the reasons for restricting the offense to a list of predicate criminality. The new FATF standards follow that trend.[17]

179. Risk: any factor affecting the level of effectiveness logically has an opposite effect on the degree of risk. A crucial element in any AML/CFT system, also from a law enforcement point of view, is the search for and identification of the real beneficial owner, which in a financial center mainly attracting and managing foreign assets depends largely on a effective preventive CDD system and a solid arsenal of legal means for the judiciary to penetrate the secrecy created by complex corporate structures and stringent confidentiality rules that can easily be abused by *mala fide* persons. As highlighted in the relevant sections, there are some distinct vulnerabilities in the preventive system weighing on the law enforcement action that cannot fully rely on the reliability of the information from the relevant sectors. The mis- or inappropriate use of the legal privilege by lawyers and auditors protecting them from criminal procedure measures related to the collection of evidence, when in reality they are not acting in their specific professional capacity, is a continuous challenge.

180. In the criminal procedure and policy domain reliance on external factors and initiatives out of the control of the Liechtenstein prosecution office and courts creates a distinct risk of the law enforcement action not leading to a satisfactory result, if any, through inertia, disinterest, or capacity problems of the foreign judicial authorities.

3.1.2. Recommendations and Comments

181. Liechtenstein has made substantial progress in bringing the ML offense in line with the Convention and FATF standards. The extension of the predicate criminality to VAT fraud, although not (yet) an international requirement, is a positive sign of relaxation of the strict fiscal exception rules and demonstrates a greater openness to meet the changing standards in the fiscal domain. The Liechtenstein authorities should continue to prepare themselves for the implementation of the new FATF recommendations in this respect.

182. The effectiveness of the repressive approach is still under pressure considering its reliance on external factors and the high level of burden of proof. Therefore it is recommended to:

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[17] On 26.11.2013 the High Court ruled that, although the originating offence should be a predicate according to Art. 165PC, it is not necessary to prove the predicate offence in terms of location, timing, offenders or modalities.

- Pursue proactively money laundering as an autonomous offense, in order to create jurisprudence on the burden of proof to establish the predicate offense; and

- Consider increasing the effectiveness of the repressive approach by attenuating the formal high level of proof by amending the list-based money laundering offense to an all-crimes offense.

3.1.3. Compliance with Recommendation 1

	Rating	Summary of factors underlying rating
R.1	**PC**	Effectiveness issues • Level of proof required to establish the predicate offense; • Only 1 conviction since 2007; • No autonomous ML prosecutions.

3.2. Criminalisation of Terrorist Financing (SR.II rated PC in Third Round MER)

3.2.1. Description and Analysis

Summary of the 2007 MER factors underlying the ratings and recommendation and progress since the last MER

183. In the previous MER, Liechtenstein was found deficient on following aspects:

- No explicit criminalisation of the financing of individual terrorists and not all instances of such financing are currently covered under the legal framework as required under SR.II;

- The financing of terrorist organisations is not criminalised in all instances required by SR.II, Liechtenstein's definition of "terrorist organisation" referring to a definition of "terrorist acts" which does not cover all acts to be considered terrorist acts under the international standard;

- Reference in Art. 278d PC to "criminal offenses" does not cover any other acts committed with the required intent to be terrorist acts;

- No criminal liability of corporate entities; and

- The lack of prosecutions and convictions for terrorist financing make it difficult to assess the effectiveness of the legal framework.

184. Liechtenstein responded to the third round recommendations to by amending the relevant articles to include acts committed by an individual terrorist and to criminalise the financing of all offenses covered by the FT Convention related Treaties as financing terrorist acts. The generic offense now refers to any act instead of criminal offenses. Corporate criminal liability was introduced.

Legal Framework:

- Arts. 278b, c, and d PC;
- Arts. 5 and 7PC;
- Arts. 12 and 15PC;
- Art. 64, para. 1.11PC; and
- Arts. 74a–74g PC.

3.3. Criminalisation of Financing of Terrorism (c. II.1)

II.1a

185. Terrorist financing is presently criminalised by Art. 278d PC, as amended by LGBI 2009 N° 49. Other novelties since the previous evaluation are the amendments to Art. 278b (terrorist group) and Art. 278c (terrorist offenses).

186. With the ratification of the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (in force since October 25, 2009), the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (in force in Liechtenstein since July 28, 2010) and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (in force in Liechtenstein since July 28, 2010), Liechtenstein is party to all international instruments relevant to SRII.[18]

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[18] Liechtenstein has now signed and ratified the following international conventions against terrorism:

1) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973 (entered into force in Liechtenstein on December 28, 1994).

2) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 18, 1979 (entered into force in Liechtenstein on December 28, 1994).

3) International Convention for the Suppression of Terrorist Bombings, done at New York on December 15, 1997 (entered into force in Liechtenstein on December 26, 2002).

4) International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999 (entered into force in Liechtenstein on August 8, 2003).

5) International Convention for the Suppression of Acts of Nuclear Terrorism, done at New York on April 13, 2005 (entered into force in Liechtenstein on October 25, 2009).

6) Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo on September 14, 1963 (entered into force in Liechtenstein on May 27, 2001).

7) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970 (entered into force in Liechtenstein on March 25, 2001).

8) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971 (entered into force in Liechtenstein on March 25, 2001).

9) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988 (entered into force in Liechtenstein on March 28, 2001).

(continued)

187. Art. 278d, para. 1, a–g PC now criminalises the sole financing (collection and provision) with the intent that they be used, even only in part, for the commission of following offenses (summary):

a) Aircraft hijacking and endangering aviation safety;

b) Kidnapping, including threatening to;

c) Attacks against internationally protected persons;

d) Endangering through misuse of nuclear material;

e) Attacks against airports;

f) Offenses against maritime navigation safety and fixed platforms;

g) Terrorist bombings.

thus including all offenses covered by the relevant Treaties referenced in Art. 2 (i) of the International Convention for the Suppression of the Financing of Terrorism (ICSFT) 1999.

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10) Convention on the Physical Protection of Nuclear Material, done at Vienna on March 3, 1980 (entered into force in Liechtenstein on February 8, 1987).

11) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988 (entered into force in Liechtenstein on 6 February 2003).

12) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988 (entered into force in Liechtenstein on February 6, 2003).

13) Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done in London on October 14, 2005 (entered into force in Liechtenstein on July 28, 2010).

14) Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on October 14, 2005 (entered into force in Liechtenstein on July 28, 2010).

15) Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on March 1, 1991 (entered into force in Liechtenstein on February 2, 2003).

16) European Convention on the Suppression of Terrorism, concluded at Strasbourg on January 27, 1977 (entered into force in Liechtenstein on September 13, 1979).

188. Art. 278d, para. 1, point 1h PC[19] criminalises the generic offense of financing any act intended to cause death or serious bodily injury to civilians with the circumstances and intentions as specified in Art. 2 (ii) the FT Convention. By substituting "criminal offense" by "an act," the legislator is now complying with the specific international standard.

189. Art. 278d, para. 1, point 2 PC now criminalises the financing of an individual terrorist or a terrorist group in following terms: "Anyone who makes available or collects assets with the intent that they be used, even only in part…by a person or a group (§ 278b, para. 3) committing[20] an act referred to in point 1 or participating in such a group as a member (§ 278b, para. 2), shall be punished…" The intent that the funds should be used for terrorist activity is no longer required.

190. Beside the financial support of a terrorist group according to Art. 278b, para. 2 PC which does not include the sole collection of funds), the financing of a terrorist group is now also covered by Art. 278d, para. 2 PC with reference to Art. 278b, para. 3 PC, defining such group as an affiliation of more than two persons intended to exist for an extended period of time and aimed at the commission of one or more terrorist offenses (Art. 278c PC) by one or more of its members.

II.1b–e

191. Art. 278d PC does not require a connection between the funds and a terrorist act, perpetrated or not. The attempt to commit FT is criminalised by Art. 15 PC, as for all offenses. Art. 12 PC generally covers participation as an accomplice (aiding and abetting, facilitating and counseling), stating a criminal offense is committed not only by the immediate perpetrator of the criminal offense, but also by anybody who incites another person to carry out the offense or who contributes to its perpetration in any other way. More specifically, participating as an accomplice, organising and directing others, contributing to the commission of the offense by a group of persons acting with a common purpose, are covered by Arts. 12 and 278b PC combined ("Terrorist Group"). As for the moral element (willful) and the definition of "funds,"[21] these elements are all covered, as already stated in the third round MER.

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[19] Art. 278d, para. 1, h PC: *"an act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the goal of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to refrain from doing any act."*

[20] In original text: *"von einer Person oder einer Vereinigung (§ 278b Abs. 3), die eine in Ziff. 1 genannte Handlung begeht oder sich an einer solchen Vereinigung als Mitglied beteiligt (§ 278b Abs. 2).*

[21] The law does not provide for a definition of "*Vermögenswerte*". However, a commentary to the StGB (PC) provides that the term "*Vermögenswerte*" is to be understood in a broad sense and covers legitimate as well as illegitimate funds, corporeal as well as incorporeal property, and all assets representing financial value, including claims and interests in such assets.[21] (Dr. Frank Hoepfel, Dr. Eckart Ratz, *"Wiener Kommentar zum Strafgesetzbuch"*, Vienna: Manz, 2004).

Predicate Offense for Money Laundering (c. II.2):

192. FT is a predicate offense to ML, Art.165 PC making an explicit reference to Art. 278d PC.

Jurisdiction for Terrorist Financing Offense (c. II.3):

193. As long as the financing activity takes place in Liechtenstein, it is irrelevant where the person committing the offense is located or where the terrorist activity itself takes place (jurisdiction *ratione loci*). Liechtenstein explicitly takes jurisdiction over FT committed in another country when the conditions of Art. 64, para. 1, 11 PC are met (Liechtenstein citizenship or foreigner in Liechtenstein who cannot be extradited).

The Mental Element of the FT Offense (applying c. 2.2 in R.2):

194. The free and sovereign appreciation of the evidence, including related to the moral/mental element or *mens rea,* by the judge is a fundamental principle in the civil law tradition. The Liechtenstein Code of Criminal Procedure (CPC) expressly confirms this rule in its Art. 205, para. 2.

Liability of Legal Persons (applying c. 2.3 and c. 2.4 in R.2):

195. Corporate criminal liability was introduced in 2010 with the Arts. 74a–74g PC, on top of and independent from the criminal liability of the individual author of the offense.

196. As for all crimes and misdemeanours, criminal liability is provided for FT when committed for the purposes of the legal person by a person with a leading position (Art. 74a, para. 1 PC) or committed by a person under its authority based on the lack of supervision or control of such a person in a leading position on the other (Art. 74a, para. 4 PC). The legal person is liable for offenses committed by a person with a leading position if this person acted illegally and culpably (Art. 74a, para. 1 PC).

197. Corporate criminal liability does not exclude liability or parallel proceedings which may result from the respective unlawful act (Art. 74a, para. 5 PC).

Sanctions for FT (applying c. 2.5 in R.2):

198. FT is punished with imprisonment of six months to five years, except if a different provision imposes a more severe sentence (Art. 278d, para. 1 and 2 PC). Financially supporting a terrorist group as a member of that group carries a penalty of imprisonment of one to ten years (Art. 278b, para. 2 PC). Comparison with the criminal sanctions provided for in other European countries (civil or common law) shows that only Austria and Switzerland apply sanctions in a similar range, all other examples carrying higher to significantly higher maximum sanctions for the basic offense,[22] which

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(continued)

Austria	FATF MER (June 2009) page 51, paragraph 193	prison term ranging from **6 months to 5 years**
Belgium	FATF MER (June 2005) page 43, paragraph 130	imprisonment **5 to 10 years**
Bulgaria	MONEYVAL Report (April 2008) page 54, paragraph 225	imprisonment **3 to 15 years**
Cyprus	MONEYVAL Report (September 2011) page 35, paragraph 84	imprisonment **up to 15 years**
Estonia	MONEYVAL Report (December 2008) page 49, paragraph 209	imprisonment **2 to 10 years**
Finland	FATF MER (October 2007) page 45, paragraph 154	imprisonment up to **8 years** for individuals involved in terrorist financing
France	FATF MER (February 2011) page 123, paragraph 398	imprisonment up to 1**0 years**
Greece	FATF MER (June 2007) page 41, paragraph 143	imprisonment up to **10 years**
Hungary	MONEYVAL Report (September 2010) page 37, paragraph 131	imprisonment between **10 to 20 years or life imprisonment**
Ireland	FATF MER (February 2006) page 41, paragraph 135	imprisonment for a term **not exceeding 20 years**
Luxembourg	FATF MER (February 2010) page 57, paragraph 221	imprisonment of **15 to 20 years or life** imprisonment if loss of life
Portugal	FATF MER (October 2006) page 39, paragraph 182	imprisonment **8 to 15 years'**
Romania	MONEYVAL Report (July 2008) page 54, paragraph 290	imprisonment **15 to 20 years**

(continued)

raises issues with regards to the sanctions being proportionate or dissuasive. The effectiveness cannot be tested in the absence of judicial cases.

Statistics (R.32):

199. See statistical figures in section 1.2.2 above. Beside one (closed) investigation in 2011, no other law enforcement initiatives have been taken. The investigation, triggered by an FIU report, related to a covert investigation in another country, which was discontinued there for lack of evidence.

Effective implementation

200. The authorities took great care to ensure the technical implementation of the SRII criteria. All FT Convention Treaties have entered into force in Liechtenstein and, more importantly, the sole financing of all offenses covered by the relevant treaties is now punished as terrorist financing. The exemption on political grounds which pervades the Liechtenstein legal system, particularly the MLA regime, does not apply here as the criminal character outweighs the political nature and the Convention takes precedence anyway.

201. A remark can be raised in respect of the transposition of the offenses covered by the 1980 Convention on the Physical Protection of Nuclear Material: under Art. 278d, para. 1)1d) they relate to the financing of acts of willful endangerment, threat, obtaining, theft or robbery of nuclear material, while Art. 7.1a of the Convention is more specific ("receipt, possession, use, transfer, alteration, disposal or dispersal"). From the governmental explanatory works that accompanied the draft amendment of Art. 278d PC, it appears that the wording was deemed sufficiently broad to the acts as defined in the Convention. The issue may be rather academic as the "obtaining" could presumably be viewed as including possession (although not all forms of use) while from a perspective of the terrorist intent and the financing of the acts the essence seems sufficiently covered. Although this is a very minor shortcoming still, from a technical point of view, the wording is not precise.

Serbia	MONEYVAL Report (December 2009) page 58, paragraph 171	imprisonment of **1 to 10 years**
Sweden	FATF MER (February 2006) page 35, paragraph 138	imprisonment up to **2 years or 6 years (depending)**
United Kingdom	FATF MER (June 2007) page 44, paragraph 160	imprisonment up to **14 years**

202. Another important gap has been addressed in Art. 278d, para. 1) 2 PC, penalising the sole financing of a terrorist individual or group without the intent of the funds being used for terrorist purposes (for instance for comfort or family support). To characterise the person or group as terrorist, the financing relates to an individual or group "committing" or "participating" in terrorist acts or groups (present and unconditional tense), which might give the impression that the person or group is already active in the terrorist domain. The authorities have however correctly referred to the FATF interpretative note on SRII, point 2b, which defines a terrorist as a natural person "who commits" etc..., using the same wording as Art. 278d, para. 1) 2 PC.

203. Financing of terrorism as such carries a punishment of imprisonment of six months to five years. The imprisonment term seems rather low compared to the sanctions imposed by a great majority of European countries, weakening their deterrent and dissuasive effect.

204. As for effective implementation, no assessment can be made in the absence of prosecutions and convictions. The only investigation was discontinued for valid reasons, while the sole case of freezing of assets under the Taliban Ordinance ended in a de-listing.

205. The risk factors valid for the AML domain similarly apply to the CFT system, with the important difference that the funds may very well have a licit origin, making the detection even more difficult. The complex legal structures, the culture of confidentiality, the extensive legal privilege protection, and the beneficial ownership identification issues could result in terrorist-related assets going undetected. It is however a positive sign of the alertness of the sector that relevant (though external) information was picked up by the reporting system in one case. All in all, the legal and institutional framework is adequate enough to capture any TF indication. There are however no sufficient concrete elements enabling to assess the efficiency of the proactive detection system.

3.3.1. Recommendations and Comments

206. The CFT regime has undergone major improvements since the previous assessment and is broadly compliant with the standard. To enhance the quality of the legal framework and the potential effectiveness of the criminal approach, it is recommended that:

- The penalties be increased to enhance their deterrent effect.

3.3.2. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• Sanctions are not proportionate or dissuasive.

3.4. Confiscation, Freezing, and Seizing of Proceeds of Crime (R.3 rated LC in third round MER)

3.4.1. Description and Analysis

Summary of the 2007 MER factors underlying the ratings and recommendations and progress since the last MER

207. The previous MER came to following recommendations:

- The criminal seizure and confiscation of the laundered assets as the object of the autonomous money laundering offense needs to be formally covered;
- All (intended) instrumentalities must be made subject to seizure confiscation, irrespective of their nature;
- R. 32.2: statistics should also comprise overall figures on criminal proceeds seized and confiscated and on criminal procedure based seizures and confiscations.

208. The legal framework governing the Liechtenstein seizure and confiscation regime has basically remained unchanged since the last mutual evaluation. In principle confiscation is conviction based, but civil *in rem* procedures are also provided for in case asset recovery is not possible by way of criminal procedure. Forfeiture of the object of money laundering is now specifically provided for.

Legal Framework:

- Art. 20, 20b, and 26 PC;
- Art. 92, 96, 97a, and 98a CPC;
- Art. 253a CPC;
- Arts. 353 to 357 CPC;
- Art. 18 DDA;
- Art. 879 CC; and
- Art. 87.2 Organisation of the Police Ordinance.

Confiscation of Property related to ML, FT. or other predicate offenses including property of corresponding value (c. 3.1):

209. The Liechtenstein confiscation system still distinguishes three distinct forms: deprivation of the economic benefit ("*Abschöpfung der Bereicherung*", Art. 20 PC), forfeiture of criminal property or proceeds ("*Verfall*", Art. 20b PC) and confiscation of instrumentalities, ("*Einziehung*", Art. 26 PC).

210. The three forms of criminal confiscation can be summarised as follows:

1) *Abschöpfung der Berreicherung* (literally: "deprivation of enrichment"—Art. 20 PC) relates to all "pecuniary benefits" derived from a criminal offense or received to perpetrate such act. This confiscation is value based, which amounts to an equivalent value confiscation. On conviction the offender is ordered to pay an amount of money equal to the "unlawful enrichment". If the amount of the enrichment cannot be determined readily, the court decides at its discretion (*ex aequo et bono*);

2) *Verfall* (forfeiture—Art. 20b PC):

- Assets belonging to criminal or terrorist organisations (as defined in Art. 278a and 278b StGB) or being made available or collected in the context of terrorism financing (Art. 278d StGB), must be confiscated (Art. 20b, para. 1 PC). An important amendment to Art. 20b PC was introduced in 2009,[23] explicitly providing for forfeiture of the predicate offense proceeds as object of the money laundering offense ("involved in money laundering") (Art. 20b, para. 2, point 1 PC);

- Assets derived from criminal activity performed in a foreign jurisdiction are also subject to confiscation even when the predicate offense is not punishable in Liechtenstein, except if it relates to a fiscal (tax) offense. In 2009, however, the possibility of forfeiture of the proceeds of a VAT fraud affecting the EU budget was introduced (Art. 20b, para. 2, point 2 PC).

3) *Einziehung*: confiscation (Art. 26 PC) of objects intended to be or actually used to commit criminal acts (*instrumenta sceleris*), or that have been produced by such activity (*producta sceleris*), but only when these objects endanger the safety of persons, morality, or the public order (Art. 26.1 PC as amended), i.e., dangerous or illegal goods such as drugs, weapons, or forged documents. It is seen predominantly as a security measure, so confiscation of such objects is mandatory also in the absence of a prosecution or conviction (Art. 26.3). Instrumentalities that have been rendered harmless or unusable, or where an innocent third party lays legal claim to, with the guarantee that the object(s) will not be used for criminal activity, are generally exempted from confiscation (Art. 26.2).

211. The limitations to the confiscation of instrumentalities were marked as a deficiency in the previous assessment, prompting an amendment to Art. 26.1 PC. The new wording still seems to exclude "innocent" objects that are not dangerous to persons, morality, or public order *per se*, such as a car driven by a money launderer to transport illegal assets. The authorities however refer to Swiss legal doctrine and jurisprudence that gives an extensive interpretation of the legal possibility to confiscate ML and FT instrumentalities, quoting cases where a car was used to commit a crime and the house of a spy was confiscated as an instrumentality. The Liechtenstein Supreme Court recognises

[23] LGBI 2009, n° 49

Swiss doctrine and jurisprudence as an authoritative source of interpretation of provisions taken over from or inspired by Swiss legislation.[24]

212. As said, beside the criminal confiscation, the Liechtenstein confiscation regime also features a civil forfeiture procedure. Pursuant to Art. 356 of the Criminal Procedure Code (CPC), there is a special procedure to permit confiscation in the absence of a criminal conviction for forfeiture *in rem*, when there is no possibility for criminal confiscation. This procedure was systematically used for proceeds from a foreign predicate, because the assets could not be criminally confiscated until the law had introduced the possibility of forfeiting the assets as object of the money laundering offense, or when the deprivation of enrichment (Art. 20 PC) is excluded in the circumstances intended by Art. 20a PC (payment of victims, legal elimination). A civil forfeiture order or freezing order must then be issued by the Court of Justice upon the application of the Office of the Public Prosecutor. Civil forfeiture orders may be obtained against individuals or entities.

Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):

213. Reference is made to the third round findings, which remain unchanged. The confiscation provision of Art. 20 PC covers all assets ("*Vermögensvorteile*" literally: "patrimonial advantages") that are the proceeds of crime. There is no formal definition in the law of what is to be understood as "proceeds." The wording is broad enough, however, to encompass not only the direct proceeds, but also any indirect ones, including substitute assets and investment yields.[25] The ML offense text expressly refers to assets that "represent the value of the asset originally obtained or received" as object of the offense (Art. 165.4 PC). The confiscation measure covered by Art. 20 PC is formulated in such way as to translate every asset to its equivalent value. Once this order is issued, it is then executed against all assets of the convicted. As said, since 2009 assets "involved" in laundering activity are expressly made forfeitable as object of the offense (Art. 20b, para. 2 PC), thus remedying an important legal gap in the context of autonomous money laundering criminal proceedings.

Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):

214. Reference is made to the third round findings, which remain unchanged. The seizure regime is incorporated in Art. 96 (seizure of assets), 97a (freezing), and 98a (seizure of objects and documents) CPC and is used either for evidentiary purposes or to ensure effective forfeiture/confiscation. Distinction is made between the freezing measure of Art. 97a CPC which relates to assets and seizure according to Arts. 96 and 98a CPC relating to objects and documents. Freezing and seizure actions are systematically used to prevent the dissipation of assets. They require the involvement of the Court of Justice (investigating judge) pursuant to Arts. 92, 96, 97a, and 98a CPC. Freezing and seizure takes the items and assets into judicial custody.

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[24] Supreme Court, B 07.09.2012, Sv.2011.42; U 04.04.2002, 1 Cg 2000.64; B 09.03.2012, 12 RS.2011.102.

[25] Confirmed by Court of Appeal decisions of November 10, 2005 and November 15, 2006, and a Supreme Court decision of February 7, 2006. See also *"Wiener Kommentar zum Strafgesetzbuch, 2004, Verfall"*.

Ex Parte Application for Provisional Measures (c. 3.3):

215. Reference is made to the third round findings, which remain unchanged. The Court of Justice issues freezing orders according to Art. 97a CPC without prior notification of the holder.

Identification and Tracing of Property subject to Confiscation (c. 3.4):

216. The Public Prosecutor can initiate an investigation on the basis of a simple suspicion raised by a variety of sources such as press articles, police intelligence, FIU reports, and foreign investigations.

217. The legal basis for identifying and tracing suspect assets is laid down in a variety of provisions, but essentially in Arts. 92, 96, 97a, 98a, 105, and 108 CPC. Art. 92 CPC allows a house search when there is a founded suspicion of the presence of a suspect or of evidentiary and other relevant objects. "Founded" suspicion exists when there are concrete indications or additional elements of such a presence. Beside information from the police, who is empowered to immobilise assets, documents and objects as conservatory measure in order to prevent their disappearance (Art. 25 National Police Act—NPA) FIU reports also mostly contain indications of where the suspect assets are or can be located.

218. Search warrants are issued by the Investigative Judge under Art. 92 CPC. Specifically in the event of ML and FT, predicate offense, or an organised crime investigation, Art. 98a CPC empowers the judge to query all banks, investment firms, insurance companies, asset management companies, and management companies for all CDD information and compel surrender of documents and other CDD-related instruments. Any refusal to provide the requested information causes the application of Art. 92 and 96 CPC (search and seizure), beside the application of other appropriate sanctions.

219. A vulnerability remains in the restriction of Art. 98a CPC in the sense that it does not cover information gathering with some relevant categories, such as payment system providers, e-money institutions, insurance mediators, and DNFBPs. The possibility of seizing documents according to Art. 96 CPC does not cover that lacuna. Particularly in the case of lawyers (acting as financial intermediaries or in other nonlitigation or legal advices circumstances), auditors, and trustees, substantial information may not be captured in seizable documents. The authorities explain this exemption on the grounds that Art. 98a CPC was specifically introduced to oblige banks and the other (prudentially supervised) institutions to disclose relevant data, usually held in electronic form in a database, without the necessity of invasive search warrants, and to allow the monitoring of accounts. In case of refusal the Art. 96 CPC seizure provision will apply. Consequently, expanding Art. 98a CPC to lawyers, trustees, and auditors would serve no useful purpose, as they do not keep accounts and relevant information can be obtained through the classical means of collecting evidence. However, the evaluators are not convinced about the rationale of this exemption, as databases are also used by DNFBPs.

220. Furthermore, Art. 108 CPC states that "Defense counsel, attorneys at law, legal agents, auditors, and patent attorneys" are entitled to refuse to give evidence, with regard to what has become known to them in this capacity. The judicial authorities do not perceive that as a problem, as they can still call them as witness under Art. 105 CPC to disclose the necessary (nonprivileged)

information, or directly use the search and seizure possibilities of Arts. 92 and 96 CPC, discarding the pieces covered by privilege. Nonetheless, endowing the auditors with a legal privilege statute can hardly be reconciled with the *ratio legis* of such immunity, since the auditors do not engage in legal representation. This 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.

Protection of Bona Fide Third Parties (c. 3.5):

221. Reference is made to the third round findings, which remain unchanged. The relevant provisions do not specify any condition as to the location, possession, or ownership of the assets subject to confiscation. Consequently, in principle, it is irrelevant if they are in the hands of third persons or not. Arts. 20c and 26 PC provide for abstention from forfeiture and confiscation if the object or asset is legitimately claimed by a person who has not participated in the offense or in the criminal organisation or in the terrorist association (Art. 20c PC) or for objects which are legitimately claimed by a person who has not participated in the offense, in which case they will only be confiscated if the person concerned does not guarantee that the objects will not be used to commit the offense (Art. 26, para 2 PC).

Power to Void Actions (c. 3.6):

222. Art. 20, para. 4 PC can be used to invalidate or prevent actions aimed at protecting the property from confiscation by physical or legal transfer to third parties. It states that the deprivation of enrichment also covers third persons benefiting unjustly and directly from an offense committed by another person, or from the economic benefit given for the commission of such an offense. These persons may also be ordered to pay an amount of money equivalent to these profits, without the necessity to prosecute them as an accomplice. This applies equally to legal persons and partnerships that have gained profits. In the case of the death of the person who has gained illegal profits, or if the legal person or partnership has ceased to exist, the profits are to be deprived from the legal successor insofar as they still existed at the moment of transfer of rights (Art. 20, para. 5 PC).

223. Voiding contracts that aim to frustrate seizure, confiscation, or forfeiture orders, is also possible in application of Art. 879 Civil Code (CC) stating as a general rule that contracts which violate existing (statutory) laws or which are contra *bonos mores* are null and void, e.g. when the contract was concluded with the intention to hinder the state‘s ability to recover legitimate financial claims. As yet, this has not been used by the Public Prosecutor, who as a rule does not involve the office in civil litigations and only makes use of the criminal law provisions and procedures.

Statistics (R.32):

Statistics Table 4. On the number of search and seizures (not limited to ML/FT)

	2009	**2010**	**2011**	**2012**
Investigations	521	566	576	533
Searches of premises	40	46	26	21
Seizures	94	73	75	67

Amounts resulting from search and seizures (not limited to ML/FT)					
2009					
Proceeds frozen		**Proceeds seized**		**Proceeds confiscated**	
Cases	**Amount** (in EUR)	**Cases**	**Amount** (in EUR)	**Cases**	**Amount** (in EUR)
38	**57.5 Mio**	**-**	**-**	**9**	**55.6 Mio**
0	**0**	**-**	**-**	**0**	**0**
2010					
Proceeds frozen		**Proceeds seized**		**Proceeds confiscated**	
Cases	**Amount** (in EUR)	**Cases**	**Amount** (in EUR)	**Cases**	**Amount** (in EUR)
34	**104 Mio**	**-**	**-**	**9**	**194.35 Mio***
0	**0**	**-**	**-**	**0**	**0**

*The high amount is the result of a final decision in the Abacha case, the assets having been frozen years before.

2011					
Proceeds frozen		**Proceeds seized**		**Proceeds confiscated**	
Cases	**Amount** (in EUR)	**Cases**	**Amount** (in EUR)	**Cases**	**Amount** (in EUR)
26	**32.4 Mio**	**-**	**-**	**4**	**4.3 Mio**
0	**0**	**0**	**0**	**0**	**0**

2012					
Proceeds frozen		**Proceeds seized**		**Proceeds confiscated**	
Cases	**Amount** (in EUR)	**Cases**	**Amount** (in EUR)	**Cases**	**Amount** (in EUR)
2	**75.9 Mio**	-	-	**6**	**4 Mio**
0	**0**	**0**	**0**	**0**	**0**

224. The apparent divergence between amounts frozen and confiscated is explained by following factors:

- Freezing is rarely followed by confiscation in the same calendar year;
- The threshold for freezing is low. Conservation of the suspect assets is seen as a priority to safeguard the confiscation action. Authorities estimate that approximately 40 percent of the freezing measures end up in a confiscation, although this is not immediately apparent from the statistics above.
- Freezing is frequently executed at the request of a foreign judicial authority, which is then not being followed up by the requestor.

225. Notwithstanding the priority accorded to criminal confiscation according to Art. 356 CPC, the majority of the confiscation procedures are still *in rem*. Based on authorities' estimates, over 80 percent of the assets confiscated in 2009–2012 are *in rem* confiscations (in terms of number of cases, the ratio between *in rem* and conviction based" confiscations is also roughly 80/20).

Additional Elements (Rec 3)—Provision for a) Confiscation of assets from organisations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):

226. Assets at the disposal of criminal organisations are subject to confiscation according to Art. 20b, para. 1 of the PC.

227. Arts. 353–357 of the CPC authorises civil (*in rem*) forfeiture proceedings if there is no criminal conviction possible (e.g. the author is unknown or has absconded).

228. Under Art. 20, para. 2 PC, the court can forfeit benefits (enrichment) that cannot be directly linked to a specified offense, based on a rebuttable legal presumption that assets a defendant holds derive from other, nonidentifiable offenses. This partially reverses the burden of proof. In this case, there is no need for the prosecutor to prove that the money is the proceeds of a specific offense. This applies with regard to:

- A perpetrator who has committed *crimes*, such as ML (Art. 17 PC) continuously or repeatedly, and has obtained economic benefits from, or received for their commission and has gained during the same period further economic benefits. The statute provides that for such additional economic benefits, there is a presumption that these benefits derive from other crimes of the same nature. If the legal acquisition of the benefits are not made credible, they have to be taken into consideration in determining the amount of money to be deprived;

- A perpetrator who is involved in a criminal organisation (Art. 278a) or a terrorist group (Art. 278b) and who, during the period of membership, has gained economic benefits, if there is an obvious presumption that these profits derive from offenses and their legal acquisition cannot be made credible (Art. 20, para. 3 of the PC).

Effective Implementation

229. The new wording to Art. 26.1 still leaves a restrictive legal condition for the confiscation of instrumentalities. It is unfortunate that the legislator still has not taken an initiative in expressly lifting the restriction and at least leaving a decision margin to the judge. It reflects an underestimation of the importance of an instrumentality as a criminal tool, disregarding the penalty value of the measure and undermining any deterrent effect. The quoted broad interpretation given by the Swiss legal doctrine and jurisprudence, both authoritative sources for Liechtenstein courts, acknowledges the fact that instrumentalities can indeed represent quite significant means and conduits enabling the commission of large scale money laundering that should be subject to confiscation.

230. A strong point in the Liechtenstein approach is its focus on asset recovery. The statistics indeed reflect a substantial effort in that area, where confiscation and forfeiture take priority over criminal convictions. The civil *in rem* confiscation procedure is a powerful and effective tool in this respect, particularly in a criminal policy system that is quite reliant on foreign investigations and prosecutions. On the other hand, the number of seizures that do not lead to confiscation because of the inertia of the foreign authorities is not negligible and shows the downside of such reliance. Also the freezing and seizure tools are systematically and proactively wielded to prevent any dealings with the

assets obstructing subsequent confiscation measures. The notable discrepancy between the high number of conservatory actions and the actual confiscations is without doubt partly due to the high level of proof of the originating offense, if not based on a foreign order or conviction. In this vein, the introduction by Art. 20b PC of the possibility to confiscate the assets as object of the offense is a significant improvement underpinning and reinforcing any future autonomous money laundering offense criminal policy.

231. It has to be noted that the burden of proof required by the courts to establish that the assets were acquired by the commission of a specific predicate offense is quite burdensome. In (mostly common law) jurisdictions that have the *in rem* procedure in their legal arsenal, it generally comes together with the principle of the sharing or reversal of the burden of proof on the illicit origin of the assets and come to a correct assessment of the amount of criminal proceeds. In Liechtenstein, this is only the case in the event of repeated and continuous behaviour involving crimes (Art. 17 PC) and in relation with criminal organisations and terrorist groups (Art. 20, para. 2–3 PC). An extension of these evidentiary rules to all serious offenses or crimes in all circumstances (repeated/continued or not) would be in line with other similar systems and would clearly add value to the confiscation regime.

232. Also from a criminal procedure point of view the effective tracing and identification of criminal assets is potentially challenged by an inappropriate application of the legal privilege protection. Because of the broad scope of the legal privilege including also auditors and the fact that in Liechtenstein lawyers often assume different roles (mostly that of a trustee), the authorities' powers could be seriously hampered in practice.

233. The omission of lawyers, trustees, and auditors in the scope of Art. 98a CPC diminishes the possibility to obtain relevant information from these professions. For trustees the situation is clearer in the sense that their secrecy obligations cannot obstruct the application of Art. 105 and 108 CPC to be heard as a witness and give evidence. For auditors, who have been mistakenly included in the Art. 108 exemption (they have no legal representation function), and lawyers, there are distinct possibilities to wield the legal privilege protection to suit their purposes.

234. The culture of confidentiality that characterises the professional and financial sector in Liechtenstein and the secrecy rules demand appropriate and adapted law enforcement legal instruments and means. As the evaluators could confirm on viewing a sample of production, search and seizure orders, the judiciary is not without response to this challenge. Firm jurisprudence is established that a trustee cannot use a lawyer's capacity to refuse to comply with production or information requests or orders from the court or to be heard as a witness.[26] The authorities stated that in cases where Art. 98a CPC cannot be applied, search and seizure is ordered by the judge on the basis of Arts. 92 and 96 CPC, while there is still the possibility to hear lawyers and auditors as a witness (Art. 105 CPC) on nonprivileged information, or if they have not acted in their privileged

[26] Constitutional Court Ruling of 17.9.2001, StGH 2000/25.

capacity. They also stated that where the lawyer has a double capacity, the presumption is that he has acted in his non-lawyer capacity until proof of the contrary. The responses from the sector are, however, quite diffuse, and the views that were expressed by the representatives of the private sector to the mission on this issue varied considerably, so the question is still open of how abuse of the legal privilege can be effectively countered.

235. Although in the MLA seizure and confiscation context steps have already been taken to streamline and simplify the appeal procedures that are sometimes used in a dilatory way (see Section 3.3.1), there are ample possibilities for delaying tactics, particularly in high profile cases. Dilatory recourse to the Constitutional Court is a frequent occurrence, also when no apparent constitutional or fundamental human rights are actually at risk. Interim decisions by the investigating judge, such as on the sealing of seized documents (whose regime has been recently affected by a decision of the Constitutional Court which may lead to reverting to past practices that proved to be burdensome), also give rise to open up all procedural possibilities from the Court of Appeal over the Supreme Court to the Constitutional Court. In the end, it gives the impression that Art. 15 on the jurisdictional competence of the Constitutional Court Act is interpreted in such a broad way as to turn the court into an alternative Court of Appeal judging over factual arguments. Such use of the procedural means has a negative impact on the duration and effectiveness of the seizure/confiscation regime. Therefore, this issue 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.

236. The risk factors general affecting the law enforcement action obviously apply to the confiscation regime as an integral part of the repressive AML/CFT regime. In the specific confiscation context, the procedural incidents and tactics, combined with high evidentiary requirements on the illicit origin, will undermine the approach in the long run that gives priority to asset recovery. In the international context, the identification and tracking of criminal assets, shielded by corporate structures or arrangements, presents a significant challenge for foreign law enforcement authorities.

237. All in all, however, and notwithstanding the elements that may hamper the performance of the system, the results of the implementation of the Liechtenstein regime must be underscored. The number of conservatory measures aimed at preventing the assets from dissipating, the systematic use of the *in rem* confiscation possibilities, and the overall amount of forfeited criminal assets reflect a particular focus on asset recovery with encouraging results for proceeds generating crimes. Statistics were not provided with specific regard to confiscation concerning ML, so assessors are not able to conclude whether, for this particular aspect, the system is effective or not.

3.4.2. Recommendations and Comments

238. The commitment of the Liechtenstein judiciary to effective asset recovery is evident. The confiscation figures are encouraging, even in the perspective of the amount of assets managed in Liechtenstein. There is still the inappropriate limitation of the instrumentality confiscation, as highlighted in the previous assessment, the reliance on varying external initiatives and the issue of the legal privilege abuse.

239. It is recommended that:

- the incomplete coverage of Art. 98a CPC needs to be addressed to include all persons and entities subject to the DDA, more in particular lawyers, auditors and trustees;

- the legislator examine effective countermeasures against abuse of the legal privilege protection in case of dual capacity;

- as with the money laundering offense, develop autonomous procedures as a correction to the reliance on foreign factors;

- the legislator considers extending the principle of the sharing or reversal of proof, now provided in Art. 20, paras. 2–3 PC, to all serious offenses or crimes in all circumstances in the context of an *in rem* procedure;

- exclude the auditors, who have no legal representation function, from the scope of legal privilege regime envisaged by Art. 108 CPC

3.4.3. Compliance with Recommendation 3.

	Rating	Summary of factors underlying rating
R.3	**LC**	• Art. 98a CPC does not cover information gathering with some relevant categories, such as payment system providers, e-money institutions, insurance mediators and DNFBPs; • 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; **<u>Effectiveness</u>** • Confiscation hampered by high burden of proof to establish the link between the illegal assets and the specific predicate offenses that generated them; • Delaying procedural tactics and abuse of legal privilege concerns (dual capacity).

3.5. Freezing of Funds Used for Terrorist Financing (SR.III rated PC in third round MER)

3.5.1. Description and Analysis

Summary of the 2007 MER factors underlying the ratings and recommendation and progress since the last MER

240. The previous assessment found significant deficiencies in the implementation of the UNSCR resolutions, recommending that Liechtenstein review its response to UNSCR 1373 and address the requirements accompanying a balanced freezing system outside the context of UNSCR 1267. It

should also elaborate a procedure covering all specific aspects required by the standards of the exceptional freezing regime in respect of suspected terrorism related assets. Furthermore the Taliban Ordinance procedure required clarification in the sense that these measures also target assets indirectly controlled and partially or jointly possessed by the designated persons. Finally, review of the freezing measure or other appellate possibilities should also be provided for, when challenged by the affected persons or in case of confusion of identity.

241. Legislation has been introduced establishing clear, although not comprehensive, procedural appeal rules for de-listing, review, and other related requests, applicable to both the UNSCR 1267 and 1373 regime. Clarification has been brought in respect of the indirect control over assets and the concept of joint possession.

Legal Framework:

- Enforcement of International Sanctions Act (ISA), December 10, 2008;
- Ordinance on Measures against Individuals and Entities associated with the Taliban (Taliban Ordinance), October 4, 2011;
- Ordinance on Measures against Individuals and Entities associated with Al-Qaida (Al-Qaida Ordinance), October 4, 2011.

Freezing Assets under S/Res/1267 (c. III.1):

242. Implementation of the United Nations Security Council (UNSC) resolutions imposing sanctions, such as UNSC 1267 and 1373, is presently governed by the Enforcement of ISA of December 10, 2008, in force since March 1, 2009. The ISA replaces the Law of May 8, 1991 on Measures Concerning Economic Transactions with Foreign States that previously provided a legal basis for the implementation of UNSC resolutions by way of ordinances issued by the government.

243. The ISA provides for compulsory measures that are aimed in particular at restricting transactions, movement of persons and/or scientific, technological and cultural exchange (Art. 1. 2a), and imposes prohibitions, licensing and reporting obligations (Art. 1.2b).

244. Besides the change of the general legal basis now provided by the ISA, the Osama bin Laden, Al-Qaida, and Taliban Ordinances 2000 has been repealed and replaced by the Taliban Ordinance and the Al-Qaida Ordinance, both of October 4, 2011, imposing the freeze of terrorist assets belonging to or controlled by persons designated by the UN Al-Qaida and Taliban Sanctions Committee.

245. As before, the names of the persons or organisations designated by the United Nations Al-Qaeda and Taliban Sanctions Committee are listed in the steadily updated annex of these ordinances. The lists are made public in the Liechtenstein Law Gazette and distributed in electronic format to the professional associations and via FMA website and newsletters to all financial intermediaries.

246. Both 2011 Ordinances continue and supplement the obligations and procedures originally established by the 2000 Ordinance:

- All funds and economic resources in possession or under *direct or indirect* control of the natural and legal persons, groups, and organisations listed in the annex, are immediately frozen *de jure* and (implicitly) without prior notice (Art.2. 1);

- Transfer of funds or otherwise directly or indirectly making funds and economic resources available to the designated natural and legal persons, groups, and organisations, is prohibited (Art. 2.2); and

- Persons and institutions holding or managing funds or with knowledge of economic resources that may fall under the Ordinance measures, must report this to the FIU without delay (Art. 6.1).

247. The FIU plays a central role in this system: not only is it receiving the freezing reports (Art. 6.1.), it monitors the execution of the compulsory measures and advises on requests of exemption (Art. 5.1). This does not invalidate the concurrent DDA obligations imposing a suspicious transaction disclosure to the FIU. The FIU processing and analysis may then lead to a report to the public prosecutor, followed by law enforcement intervention and prosecution. This circumstance has however no impact on the specific and indefinite freezing regime as lay down by the Ordinance.

Freezing Assets under S/Res/1373 (c. III.2):

248. The ISA also provides for a general legal basis for the implementation of UNSCR 1373. A particularity of the ISA is stated in its Art. 1: beside compulsory measures by the government to enforce international sanctions adopted by the United Nations, such measures can also be taken to enforce sanctions adopted by "the most significant trading partners of the Principality of Liechtenstein." This reference has its origins in the legislative history of the ISA, which was primarily designed to provide an improved legal basis for the enforcement of sanctions lists by the United Nations as well as by the European Union, but it still seems a rather controversial and discriminative approach of view unnecessarily narrowing the application of UNSCR 1373.

249. Apparently there has been no cause for Liechtenstein to establish its own terrorist list. There is no specific procedure in the event the circumstances would call for the drafting of such domestic lists, nor is it provided what conditions the list should meet. If the necessity should arise, the task of proposing a governmental decision in that sense would probably and logically fall to the AML/CFT Working Group PROTEGE.

250. Any suspicion of assets being related to terrorists or terrorist groups would in any case call for the application of the DDA and the CPC provisions, triggering a five-day freezing of the assets together with a SAR to the FIU, or a denunciation to the law enforcement authorities, as appropriate.

Freezing Actions Taken by Other Countries (c. III.3):

251. Although not an EU member, Liechtenstein does observe and implement the relevant EU regulations by way of ordinances. Banks generally adopt the U.S. OFAC list on a voluntary basis. On the other hand, except for the transposition by the ordinance of October 9, 2012 of a Swiss list of persons sanctioned in that country, Liechtenstein has not taken any legislative action in a cross-border

context. Any request from another country would be met on an *ad hoc* basis but, until recently no procedure or conditions had been formalised on how this process was to be implemented. (On August 5, 2013, the PROTEGE working group, acting under its mandate given by the government by its decision of January 15, 2013, drafted a formalised procedure how to handle requests from foreign countries in the context of SR.III. According to this procedure, all incoming requests have to be immediately forwarded to the PROTEGE Chair. PROTEGE then decides on the measure to be applied. These measures may range from requesting additional information from the requesting state, to alerting all financial institutions by the FIU, to send the name list to all reporting entities by the FMA, to publish these names, or to request the government to include the names on a official list (with freezing effect), based on the relevant ISA provisions. Should assets be frozen, at least once a year, a review has to be conducted if this measure is still meeting the conditions.

252. The dissemination and ensuing procedures would follow the same line as with the UNSCR 1267 lists. Beside publication of the appropriate ordinance in the Liechtenstein Law Gazette, the FMA would ultimately be in charge of the dissemination of such lists, domestic or foreign, notifying all persons and enterprises subjected to the DDA by means of their website or newsletter. The subjected entities owning or controlling such funds are under the obligation to immediately freeze the assets.

253. According to Art. 3, ISA a general duty is imposed on the persons directly or indirectly affected by the compulsory measures to disclose relevant information to the competent executing authorities, i.e. the government and the designated administrative offices (Art. 15 ISA) "on request" to enable a comprehensive assessment or supervision. The existing ordinances specifically designate the FIU as the executing authority responsible for the monitoring of the implementation and to whom it is mandatory for the affected persons and entities to report to automatically.

Extension of c. III.1–III.3 to funds or assets controlled by designated persons (c. III.4):

254. The ISA does not define "funds," only referring to "transactions involving goods and services, payment and capital transfers, and the movement or persons, as well as scientific, technological, and cultural exchange" as subject to compulsory measures. The 2011 ordinances are now explicit on the definition of funds and economic resources (Art. 3) and have clarified the term "control" as covering both direct and indirect control (Art. 2).[27] The reference to "indirect control" covering also control by persons acting at the behalf or direction of the designated entities is now

[27] Art. 2.1) "Funds and economic resources in the possession or under the direct or indirect control of the natural and legal persons, groups, and entities referred to in the Annex are hereby frozen". Art. 3b) "funds: financial assets, including cash, cheques, claims on money, drafts, money orders and other payment instruments, deposits, debts and debt obligations, securities and debt instruments, certificates representing securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale, documents evidencing an interest in funds or financial resources, and any other instrument of export-financing."

confirmed by Art. 2.1) b) of the Amendment of August 13, 2013 to the 2011 ordinances, entered into force on August 16, 2013.

255. The legislator still has not explicitly specified the term "possession" in the ordinances as also including partial and co-ownership, which was highlighted as a technical deficiency in the previous MER. Liechtenstein law however has a legal concept of "possession" including also "joint" possession (Liechtenstein Property Law ("*Sachenrecht*"), Arts. 25–33 of the Property Law (*Gemeinschaftliches Eigentum*"), so single person and joint possession are both covered by the term "possession" as referred to in Art. 2 of the ordinances. Legally, this makes sense and can be accepted. The concept also covers "partial" possession, which is now explicitly provided for in Art. 2.1 of the Amendment of August 13, 2013 to the 2011 ordinances ("*teilweise")*, in force since August 16, 2013.

Communication to the Financial Sector (c. III.5):

256. As before, the UNSCR 1267 and Taliban/Al Qaida Ordinances lists and changes are first published in the national newspapers and the Liechtenstein Law Gazette. Moreover, all relevant information is immediately communicated by the FMA to the professional associations for distribution to their members.

257. The FMA publishes all lists relating to the implementation of UNSCR 1267, UNSCR 1373, and the EU Regulations on its website (www.fma-li.li) and sends e-mail messages (FMA Newsletter) in the case of amendments to the lists. The FMA Newsletter currently has 1,287 subscribers, including all professional associations. The FIU website also refers to the sanctions lists.

Guidance to Financial Institutions (c. III.6):

258. Since the previous assessment and the adoption of the ISA the authorities did not feel the necessity to give further guidance, as the freezing rules were considered sufficiently ingrained in the system. The newsletters sent out by the FMA and the FIU guidance papers, such as on reporting requirements and NPOs (2013, occasionally contain references to the freezing regime.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):

259. The ISA 2008 provides for appeal procedures against the administrative and governmental decisions and orders (Art. 9). These theoretically apply in relation to decisions taken in the framework of UNSC Res. 1373 (domestic lists). They can also be used in a UNSC Res. 1267 context, but then only in relation to the validity of the administrative measures transposing the UNSCR lists. There is always the fundamental right to directly address the Constitutional Court (Art. 15, para. 3 Constitutional Court Act) on violation of human or constitutional rights grounds. The de-listing itself falls however outside the jurisdiction of the Liechtenstein Courts.

260. Requests for de-listing from the Al-Qaeda and Taliban UN list now follow the approach outlined in UNSCR 1904 of December 17, 2009 as updated. All requests to be removed from the UN Consolidated list are addressed to the Office of the Ombudsperson at the UN. All Liechtenstein citizens or residents, including legal persons, who are affected by the freezing measures, can directly address the ombudsperson, which will help them to follow the appropriate procedure. Any such

request related to other sanctions lists still would be addressed to the Focal Point (UNSCR 1730 2006). The request may also be appropriately processed by the Ministry of Foreign Affairs, who will examine if their request is founded, and if so, will address the Ombudsperson or, as the case may be, Focal Point for de-listing. No public guidance on this procedure exists yet.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):

261. Confusion or errors on the identity of the alleged terrorist entity or on the owner/possessor of the assets, resulting in freezing measures prejudicing innocent third parties, can be brought before the appropriate administrative or judicial authorities, depending on the nature of the freezing. Administrative measures can be appealed with the government or Administrative Court within 14 days (Article 9 ISA). Lifting of the judicial freezing requires the intervention of the investigating judge or the Court of Justice, according to the CPC rules.

Access to frozen funds for expenses and other purposes (c. III.9):

262. Art. 2 ISA gives the government the power to make exceptions to the freezing regime out of humanitarian considerations or in the interest of Liechtenstein. This would apply both in a UNSC Res. 1267 and 1373 context.

263. Specifically for UNSC Res. 1267, the 2011 ordinances provide for such exceptions on humanitarian grounds (Art. 2.3) to be requested to the FIU, in conformity with the conditions set out in UNSC Res 1452 (2002) and its successors.

Review of Freezing Decisions (c. III.10):

264. As said, individuals or entities whose names have been included on the list of the 2011 Taliban/Al Qaida Ordinances may, in accordance with Art. 15, para. 3 of the Constitutional Court Act, lodge an individual complaint with the Constitutional Court on fundamental principle grounds. Persons or undertakings whose names have been included on the list of the Al-Qaida/Taliban Ordinance may also demand a copy of an order confirming that they are actually affected by the blocking of assets, which can be appealed to the Administrative Court (National Administration Act and Art. 9 ISA). These procedures can only relate to the administrative decisions transposing the UNSC list and procedural issues, not to the listing by the UNSC. If, however, the review would amount to a request of de-listing from the UNSC list, the above procedure would not be the appropriate one, because outside the jurisdiction of the Liechtenstein courts. In that case the process through the ombudsperson (UNSCR 1904) must be followed.

265. As for the UNSC Res. 1373 (domestic or foreign) related freezing, any review in principle falls under the jurisdiction of the Liechtenstein Administrative Court, insofar they are based on a government decision. If based on the DDA or CPC regime, the Court of Justice takes jurisdiction.

Freezing, Seizing, and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11):

266. The provisions of the Code of Criminal Procedure (Art. 97a CPC) and the Criminal Code (Art. 20b PC) apply to the freezing, seizure, confiscation, and forfeiture of assets used for purposes of terrorist financing or other terrorist related funds.

Protection of Rights of Third Parties (c. III.12):

267. According to Art. 20c, para. 1(1) PC, forfeiture of assets is excluded to the extent that persons who are not involved in the punishable act, the criminal organisation, or the terrorist group, have legal claims in respect of the assets concerned.

268. Outside the context of criminal procedure based seizure, there are no specific provisions on such protection in the ISA or Ordinances. To challenge administrative freezing measures, *bona fide* third parties have the option to rely on the administrative review procedures as outlined above under SRIII. 7 and 10).

Enforcing the Obligations under SR III (c. III.13):

269. The ISA subjects must cooperate with the competent authorities to enable a comprehensive assessment and supervision (Art. 3 ISA). These "executive authorities," identified in the ordinances, have the power to enter and inspect the business premises of the persons who are under the disclosure obligation. The FMA, also on behalf of the FIU, uses this power when verifying compliance with the Ordinance in the framework of due diligence inspections.

270. The following sanctions are laid down in Arts. 10–13 ISA:

- Willful violation of provisions of an ordinance related to punishable acts: up to three years imprisonment or fine of up to 360 daily rates; halved in case of negligent noncompliance (Art. 10);

- Refusal to cooperate with the competent authorities and making false or misleading statements (Art. 11.1.a): Violation of provisions of an ordinance related to punishable acts if not punishable under another penal provision: 100,000 SFr or imprisonment up to six months (Art. 11.1.b); halved in case of negligence;

- Corporate criminal liability alongside personal liability of the representative (Art. 12); and

- Confiscation of the relevant property and assets, even outside the scope of criminal proceedings, if so imposed by international law (Art. 13).

271. The DDA, PC, and CPC provisions on noncompliance and sanctions apply in all instances related to other terrorism related assets.

Statistics (R.32)

272. As of January 2009, the overall amount of funds frozen pursuant to UNSC Resolution 1267 was CHF 90,200 (the measure was provoked by a bank receiving information of an on-going Swiss investigation). Due to removal of the person from the list by the UN in May 2011, no assets are still frozen or have been frozen since.

Additional Element (SR III)—Implementation of Measures in Best Practices Paper for SR III (c. III.14):

273. The authorities have not implemented the Best Practices.

Additional Element (SR III) — Implementation of Procedures to Access Frozen Funds (c. III.15):

274. Access to funds on humanitarian grounds and for basic expenses is provided for in Art. 2 ISA and the ordinances.

Implementation, effectiveness, and risk

275. The adoption of the Enforcement of ISA significantly amended and improved the legal framework governing the terrorist asset freezing regime in Liechtenstein. 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 UNSCR 1267 and 1373 context.

276. The restriction of the ISA to only enforce the sanctions adopted by the "most significant trading partners" can hardly be reconciled with the general purport of UNSCR 1373, which does not tolerate such limitation. Although it has not had any negative effect as yet considering the absence of any transposition request from another country and the Swiss list having been spontaneously adopted by Liechtenstein, it is unduly narrowing the implementation of the resolution from the very start.

277. As for the application of UNSCR 1267, there was only the technicality of the definition of "possession" not explicitly covering partial possession, the authorities having convincingly argued the legal notion of "possession" also covering joint possession situations. Besides addressing the issue of partial possession, the amendments of August 13, 2013 to the 2011 ordinances, in force since August 16, 2013, have clarified the reference to "indirect control" as covering also control by persons acting at the behalf or direction of the designated entities.

278. As for UNSCR 1373, there is still some work to be done. Although the appeal procedures are in place, and there is an explicit provision on humanitarian aid, neither the ISA nor any other legal text determines how to proceed in the event of the establishment of a domestic list. The procedure to be followed in relation to requests for domestic transposition of foreign lists was put in place as a result of the PROTEGE decision of August 5, 2013.

279. It is difficult to assess the overall effectiveness the system in the absence of actual cases of freezing (except for one instance in 2009, later de-listed) and transposition. The interested parties appear to be sufficiently informed of their duties. The one case of freezing under UNSCR 1267 since

the last round seems to have received an appropriate treatment according to the rules. With the latest procedural additions, the system seems broadly geared to be able to take the required swift measures in case of detection.

280. Considering the attention given by the authorities and the sector to the UNSCR and other relevant foreign lists, the risk of noncompliance appears relative in terms of observance of the lists. The deficiencies and weaknesses noted on the application of the CDD, however, particularly in respect of the beneficial ownership, and the existence of complex legal structures and the weaknesses noted under R33 and 34 increase the possibility of targeted terrorist assets going undetected.

3.5.2. Recommendations and Comments

281. The authorities should see to it that:

- The scope of application of the ISA 2008 is not restricted to certain countries by removing this general clause from the ISA;
- Issue guidance on the procedures for de-listing from the Al-Qaeda and Taliban UN list.
- Procedures to be followed for drafting domestic lists are elaborated.

3.5.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• Scope of application of ISA 2008 restricted in relation to UN Res. 1373; • No procedures in place for domestic designations; • No public guidance on the procedures for de-listing from the Al-Qaeda and Taliban UN list; **Effectiveness** • Effectiveness affected by deficiencies in CDD application and transparency of legal persons and arrangements.

Authorities

3.6. The Financial Intelligence Unit and its Functions (R.26—rated LC in the 2007 MER)

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress since the last MER

282. In the previous assessment report, the deficiencies underlying the rating were mainly technical in nature. It was noted that the law did not expressly provide for the FIU's access to all relevant information held by reporting entities. Additionally, the FIU Act had not been amended to include financing of terrorism.

283. Since the last assessment, the FIU Act has been amended to include financing of terrorism. The FIU has issued consolidated written guidelines on reporting and sector-specific reporting forms for banks, trustees, and insurance businesses to complement the existing general reporting form. Training and awareness-raising activities have continued to be provided, especially in the nonbanking sector. Within two months from the onsite visit, the DDO was amended to empower the FIU explicitly to issue guidelines and to request additional information from reporting entities and other concerned parties in the case of a SAR.

3.6.1. Description and Analysis

Legal Framework:

- Law of March 14, 2002 on the Financial Intelligence Unit (FIU Act);
- Law of December 11, 2008 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing (DDA);
- Ordinance of February 17, 2009 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing (DDO);
- Law of November 24, 2006 against Market Abuse in Trading of Financing Instruments (MAA);
- Guideline for submitting reports to the Financial Intelligence Unit issued on April 1, 2013 (FIU Guideline); and
- Law of April 21, 1922 on General Administrative Matters.

Establishment of FIU as National Centre (c. 26.1):

284. The FIU of Liechtenstein is an independent administrative agency within the Ministry of Presidency and Finance. It was established in 2001 by the ordinance of February 22, 2001, which was repealed and replaced by the FIU Act in 2002. The FIU Act governs the position, competences, and responsibilities of the FIU.

285. Art. 3 of the FIU Act establishes the FIU as the central administrative office responsible, inter alia, for obtaining and analysing information necessary to detect money laundering, predicate offenses of money laundering, organised crime, and terrorist financing.

286. The competences and responsibilities of the FIU are set out in detail under Arts. 4 and 5 of the FIU Act. In addition to receiving and analysing activity reports (SARs)on suspicions of money laundering, predicate offenses, organised crime, and financing of terrorism, the FIU also receives

reports on market abuse[28] (Art. 4, para. 4 FIU Act). Following receipt of SARs, the FIU conducts its analysis (Art. 4, para. 2 FIU Act) and compiles analytical reports for dissemination to the Office of the Public Prosecutor, where the analysis substantiates the suspicion of ML, predicate offenses, organised crime, and FT. In the course of the financial analysis of SARs, the FIU collects any information necessary for the detection of money laundering, terrorist financing, organised crime, and predicate offenses and cooperates with domestic and foreign authorities for such purpose.

287. In addition to its core functions, the FIU is responsible for the administration of data processing systems for the fulfillment of tasks set out under the FIU Act, compiling strategic reports for the government and other authorities, providing feedback to reporting entities and the general public, training public servants and reporting entities and providing technical assistance to lower capacity countries. As the central AML/CFT authority in Liechtenstein, it also chairs the national AML/CFT working group (PROTEGE).

Guidelines to Financial Institutions on Reporting STR (c. 26.2):

288. On April 1, 2013, the FIU issued consolidated guidance on the manner of reporting, including standard reporting forms and the procedure to be followed in the submission of suspicious activity (and other) reports to the FIU. The legal status of the FIU Guideline was not clear at the time of the on-site mission since the FIU Act did not empower the FIU to issue any form of guidance. Nevertheless, this issue was addressed within two months[29] following the onsite visit by an amendment to the DDO. Prior to April 2013, guidance was provided in the form of annual reports, at meetings with professional organisations, public training activities, in-house training events, and in the form of public statements at press conferences or similar occasions. As indicated in the 2007 MER, given the size of the financial and nonfinancial sectors in Liechtenstein and the number of SARs submitted, guidance was also provided by the FIU (and still is) on a case-by-case basis through a form of *de facto* consultation with reporting entities. A standard reporting form was also available prior to April 2013.

289. The FIU Guideline provides comprehensive instructions on the process of reporting. In particular, it elaborates on the conditions on the basis of which a SAR is to be submitted. For instance, the guideline specifies that a potential link between the activity and a predicate offense is sufficient to trigger the obligation to report. Additionally, the guideline explains that the obligation may also arise even if the specific predicate offense from which the assets originate is not known. The guideline also stipulates that there are no special preconditions which should apply (such as a justified suspicion) for a SAR to be submitted. It is also emphasised that the reporting entity is not required to

[28] The requirement to report market abuse suspicions to the FIU was introduced at a time when market abuse was not yet part of the list of predicate offenses for ML under Liechtenstein law. Since then, market abuse has been introduced in the list of predicate offense for ML and suspicions of ML relating to market abuse fall under the general reporting requirement.

[29] Ordinance of August 20, 2013 on the amendment of the Due Diligence Ordinance (DDO amendment).

determine whether the suspicious activity could lead to coercive measures being undertaken by law enforcement authorities. The guideline also sets out the measures to be taken by the reporting entity after reporting. In order to assist reporting entities in determining when a suspicion arises, a detailed explanation of 'suspicion' within the context of money laundering, predicate offenses, organised crime and financing of terrorism is provided. The FIU Guideline specifies that a SAR must contain all information required for the FIU to evaluate the matter (Art. 17, para. 1 DDA and Art. 26, para. 3 DDO).[30]

290. As to the form of reporting, the guidelines require reporting entities to submit reports by completing a standard form[31] in writing and to send it by post, courier, fax or e-mail. A clear indication of the postal and electronic addresses of the FIU and other useful contact information of the FIU are provided. Various reporting forms are available on the website of the FIU. Banks, insurance companies, trustees, and lawyers are required to complete a sector-specific form.

291. The reporting forms contain information fields which must be completed by the reporting entity. These include details of the reporting entity, an explanation of the facts which raised the suspicion, details on the type of business relationship, and the contracting party, information on all beneficial owners involved, total amount of assets involved in the business relationship, details on the accounts and financial transactions and the clarifications carried out by the reporting entity before submitting the report. The reporting form is to be accompanied by all CDD documentation obtained by the reporting entity when establishing the business relationship/carrying out the occasional transaction.

292. Although the use of reporting forms is standard, upon consultation with the FIU, it may be determined that the quality of the report can be improved if a standard form is not used. In such cases, all the records required in a reporting form must be submitted.

293. A report is considered to have been submitted if it is complete and has been confirmed by the FIU. The FIU Guideline provides that as soon as the SAR reaches the FIU, receipt of the SAR is confirmed in writing. The confirmation includes a reference number, the name of the responsible officer, and an indication of when the freezing of assets ends.[32] The FIU reviews the contents of the report to ensure that it is complete and requests missing records, where necessary. The reference number must always be quoted in communications with the FIU.

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[30] Further information on the content of the guidelines is found under the analysis of Recommendation 13.

[31] Art. 26(3) of the DDO empowers the FIU to issue a standardized report form.

[32] As explained in other parts of the report, pursuant to Art. 18, para. 2 of the DDA, following the submission of a SAR, reporting entities shall refrain from carrying out any actions which might obstruct or interfere with a restraining order issued in terms of Art. 97a of the Criminal Code of Procedure, unless such actions have been approved in writing by the FIU.

Access to Information on Timely Basis by FIU (c. 26.3):

294. The FIU Act contains various provisions which provide the legal basis for the FIU's access to financial, law enforcement and administrative information: however Art. 4 of the FIU Act limits the access to the information as it states that the "FIU shall obtain information necessary to detect money laundering, predicate offenses of money laundering, organised crime and terrorist financing, subject to legal provisions relating to the protection of secrecy." The impact and scope of this provision is discussed in more detail below. Art. 5 provides that the FIU shall be responsible for obtaining information from publicly available and nonpublicly available sources that is necessary to detect ML, predicate offenses, organised crime, and FT and to cooperate with the National Police for obtaining information necessary to detect ML, predicate offenses, organised crime, and FT. Art. 6 empowers the FIU to request domestic authorities to transmit information necessary to combat ML, predicate offenses, organised crime, and FT.

295. The DDA also contains a provision dealing with access to information. Art. 36 of the DDA states that domestic authorities, in particular the courts, the Office of the Public Prosecutor, the FMA, the FIU, the National Police, and other authorities responsible for combating ML, organised crime, and FT are required to provide all information and transmit all records to each other that are necessary for the enforcement of the DDA. It is doubtful whether this provision could be resorted to by the FIU to obtain information in the context of criterion 26.3 ("to properly undertake its functions, including the analysis of STRs"), since the exchange of information envisaged under Art. 36 of the DDA is limited to the enforcement of the DDA which does not make reference to the functions of the FIU (set out in the FIU act). Moreover, as discussed under Recommendation 4, it is debatable whether the FMA would have the power to share information with the FIU, as it appears that the FMA may only share information with other supervisory authorities. This limitation deprives the FIU from access to, among others, information on the structure and activities of licensed entities, information on AML/CFT supervisory findings pursuant to inspection visits and other information that licensed entities are required to file with the FSA on a periodic basis.

296. None of the provisions dealing with access to and exchange of information stipulate that information is to be provided to the FIU on a timely basis. Nevertheless, the assessors were informed that the response time is extremely short when these requests are made. In a large majority of cases, the information is received on the same day.

297. Art. 9, para. 1of the FIU Act provides for the FIU's direct online access to certain databases. On the basis of this article, the national authorities are required to provide the FIU, on request, with the information necessary to fulfill its responsibilities. In order to fulfill its responsibilities, the FIU is entitled to access certain registers of the administrative offices of the National Public Administration by means of an online retrieval procedure. Once the relevant administrative office has given its consent, the FIU may access the records concerned. The government shall specify by ordinance which register the FIU may access. However, no such ordinance has ever been issued.

298. In implementing Art. 9, para. 1 the FIU has established direct online access to the *Zentrales Personenverzeichnis* which contains the following data:

- Commercial registry data: data on legal entities, such as company name, legal form, address, and status (active, inactive, in liquidation, deleted). More detailed extracts from the commercial registry (including information on the subscribers of the legal entity; issued, allotted, and paid-up share capital; information on the directors; company secretaries and other involved parties; legal and judicial representation of the legal entity etc.) have to be requested via phone/e-mail/fax. Usually, extracts are delivered very shortly (within hours) after the request has been submitted;

- Citizens' registry data: complete data of natural persons that are or have been resident in Liechtenstein (surname, first name, data and place of birth, place of civil origin, citizenship and address);

- Employers' records: employment data of natural persons (current employer, former employer).

299. The FIU also has direct online access to the CARI system which contains data on vehicles.

300. The FIU may also request information from the Liechtenstein National Police pursuant to Art. 6 of the FIU Act. Such information would include criminal records, information on ongoing and concluded investigations, assets frozen or seized by the police, formal and informal requests for international cooperation, etc. According to the FIU, information requested from the National Police is accurate and provided on a timely basis. In order to enhance access to law enforcement information, at the time of the onsite mission, discussions were taking place between the FIU and the police to install a new IT tool which would provide mutual access to relevant data through a "hit-no-hit solution." This would enable each authority to determine whether a person is registered in the other authority's database. Where a hit is identified, further information, within the parameters of the law, would be requested.

301. The FIU can also request data from the *Steuerverwaltung* (tax administration). The evaluators were informed that information exchange has been limited so far, given the high percentage of SARs that concern foreign residents and given the limited number of tax offenses which are considered as predicate offenses for ML (only VAT fraud to the detriment of an EU country is considered as a predicate offense).

302. The FIU may obtain information on immoveable property indirectly upon a request to the property registry. Information on business entities may be obtained indirectly from the FMA if it relates to a licensed entity or the Office of Economic Affairs for other business entities. Information on VAT numbers and other relevant tax data can be obtained from the tax administration.

303. During the onsite mission, the FIU pointed out that the domestic databases are very rarely relevant for the analytical work of the FIU. It is only in exceptional cases that Liechtenstein residents are the subject of a SAR. In view of this, no statistical data is maintained on online requests and requests that are directed to other authorities. However, the assessors were informed that the response time is extremely short when these requests are made. In a large majority of cases, the information is received on the same day. It is the view of the evaluation team that all the provisions in the FIU Act which provide for the FIU's access to financial, administrative and law enforcement information

(except to some extent Art. 9[33]) are restricted by Art. 4 of the FIU Act which sets out the competences of the FIU. More specifically, Art. 4, para. 3 states that the FIU shall obtain information necessary to detect money laundering, predicate offenses of money laundering, organised crime and terrorist financing, subject to legal provision relating to the protection of secrecy.

304. The authorities pointed out that the power to obtain information of the FIU derives from a combined reading of Art. 4, para. 1 and Art. 5, para. 1 (c). Art. 4, para. 1, which refers to the FIU's receipt function, makes reference to Art. 5, para. 1, that includes, *inter alia*, the power to obtain information from publicly and nonpublicly available sources (para. c). The power under Art. 5, para. 1 (c) is not restricted by provisions relating to the protection of secrecy. The authorities assured the assessors that in practice Art. 4, para. 3 does not prejudice the power of the FIU to obtain information from nonpublicly available sources. However, the evaluation team concluded that Art. 4, para. 3 sets out the general competence of the FIU to obtain information, while the other provisions in the FIU Act provide for the more specific responsibilities, (obtain information from publicly and nonpublicly available sources—Art. 5) and administrative assistance (the FIU may request domestic authorities to transmit the information—Art. 6).

305. In conclusion, the existing legal framework could limit the access of the FIU to financial and law enforcement information that it requires to properly undertake its function because of: (i) the express limitation to the competence of the FIU to obtain information necessary to detect money laundering, predicate offenses, and terrorist financing to the legal provisions relating to the protection of secrecy; (ii) the limitations that the FMA has in providing confidential information to the FIU, and (iii) the fact that there is no obligation for the FMA or law enforcement to provide the FIU with the requested information.

Additional Information from Reporting Parties (c. 26.4):

306. During the onsite visit (and as noted in the previous MER), the power to request additional information from a reporting entity other than the one submitting the SAR was not expressly stated in the law. The situation was addressed following an amendment to Art. 26 of the DDO within two months of the onsite visit. Now, pursuant to Art. 26 of the DDO, the FIU may request additional necessary information in relation to a suspicious activity report not only from the reporting entity but also from other parties concerned, after the receipt of the suspicious activity report. Such information is to be submitted without undue delay and if necessary the FIU can set a deadline for its submission. The authorities explained that in this new provision "parties concerned" refers to, for instance, banks to which a payment has been made from another bank that has submitted a SAR, a trustee (that has not submitted a SAR) who is an involved party in a Liechtenstein company that featured in the SAR of a bank, or an insurance company from where payments have been made to a bank which has submitted the SAR. It was indicated that the term "concerned" is interpreted in a very wide sense to encompass any entity that is in possession of information that the FIU needs to conduct its analysis.

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[33] Art. 9 mainly appears to provide for access to publicly available information.

This also applies to reporting entities that are only indirectly concerned, as long as the request of the FIU is justified by analytical needs. Considering that this provision was only enacted very recently, it was never tested in the period under review. The authorities pointed out that prior to the amendment to Art. 26, the FIU had regularly requested reporting entities (other than the one which had submitted the SAR) to provide additional information. A number of sanitised examples were provided to the assessment team of requests for information sent by the FIU prior to the amendment to reporting entities and the responses to these requests. However, most of the reporting entities interviewed stated that they had never received such requests from the FIU.Some also stated that they would not provide the requested information to the FIU.

307. Notwithstanding the newly established power of the FIU to request additional information from reporting entities following the receipt of a SAR under the DDO, as explained under Criterion 26.3, Art. 4, para. 3 of the FIU Act restricts the ability of the FIU to obtain information subject to legal provisions relating to the protection of secrecy. The authorities assured the assessors that in practice Art. 4, para. 3 does not prejudice the power of the FIU to obtain additional information from reporting entities. However, for the avoidance of any doubt and in the light of the position expressed by some reporting entities, the assessors are of the view that reference to protection of secrecy in the context of the FIU's power to obtain information can pose a legal challenge to the FIU's power to obtain information subject to secrecy from reporting entities and should be removed.

308. There are no specific sanctions in the DDO for failure to provide additional information when so requested in terms of Art. 26. In these cases, the authorities explained that Art. 48 on the Law on General Administrative Matters would apply. Pursuant to the procedure set out under Art. 48, the FIU would issue a formal decision ordering the reporting entity to provide the requested information. In terms of Art. 117 of the same Act, failure to comply with the order in a satisfactory manner would be subject to a fine of up to CHF 5,000. Where a legal person is concerned, the competent organ of that legal person (e.g. the Board of Directors of a Bank) may also be subject to the fine (Art. 117(2)). Where the law is breached repeatedly, the fine may be increased to CHF 10,000 or to imprisonment of up to three months (Art. 117(3)). While taking note of the provisions in the Law on General Administrative Matters, it is the view of the evaluation team that a specific provision dealing with failure to provide information as requested under Art. 26 should be specifically provided for (especially since specific sanctions apply for breaches of all other requirements under the DDA and DDO, including for failure to provide information requested by the FMA).

309. The evaluators were informed that additional information from reporting entities may be obtained indirectly through the FMA in terms of Art. 36 of the DDA. Nevertheless, as explained in other sections of the report it is doubtful whether this provision could be resorted to by the FIU to obtain additional information, since pursuant to Art. 28, para. 4 of the DDA, the FMA may only obtain information from persons subject to due diligence for supervisory purposes. More in general, it is debatable whether the FMA is in a position to exchange information with the FIU, due to conflicting provisions on confidentiality referred to under Recommendation 4.

Dissemination of Information (c. 26.5):

310. Where following the analysis of a SAR, the suspicion of ML, a predicate offense, organised crime, or FT is substantiated, an analytical report together with the SAR itself is forwarded to the Office of the Public Prosecutor for investigation (Art. 5, para. 1, letters b and g of the FIU Act). The assessors are of the view that the FIU should not be required to transmit the SAR itself to the PPO, as this may expose the identity of the reporting entity and may therefore discourage reporting entities from submitting a SAR. As a result and considering the low numbers of STRs noted under the analysis of R13, this could have an impact on the effectiveness of the receipt function of the FIU.

311. Following the analysis of a case, the case analyst, together with the Deputy Head of the FIU or in his absence the Head of the FIU, determines whether the case is to be sent to the Office of the Public Prosecutor. The final decision is taken by the deputy director or, in his absence, the director, in accordance with the internal procedures of the FIU.

312. A discussion on the practical implementation of this criterion is found under the Effective Implementation Section.

Operational Independence (c. 26.6):

313. The FIU is a government agency situated within the operational structure of the Ministry of Presidency and Finance. Although the FIU Law does not expressly provide for the FIU's independence from any other authority, the FIU has a separate budget, is situated in detached premises and operates its own IT infrastructure. The budget of the FIU is a separate line in the budget of the Ministry for Presidential Affairs and Finance. It is elaborated by the head of the FIU and agreed by the prime minister. The annual budgets of all public entities, including the FIU, are published in the annual activity report of the government.

314. The Director of the FIU reports directly to the prime minister. The director, the deputy director, and the heads of departments are all appointed by the government through a public administrative procedure. All other staff holding nonmanagerial positions is formally employed by the Public Office of Human and Administrative Resources through a procedure which is initiated and elaborated by the director of the FIU. It is the view of the assessors that the FIU has sufficient operational independence and autonomy and is free from undue influence and interference in the performance of its functions.

Protection of Information Held by FIU (c. 26.7):

315. The FIU has established and maintains its own data processing systems. Various security measures were put in place to protect information held at the FIU's premises. In 2011, the government invested a substantial amount of funds to increase the physical security of the FIU premises and to provide for a fully autonomous FIU database. The FIU database is integrated in a confidential internal operational IT concept. Both the premises of the FIU and the FIU database were inspected by the assessor on-site and they were satisfied with the level of security measures which have been implemented.

316. Every analyst has individual access to three separate workstations: one for SAR data which is completely autonomous from the other networks, one for access to the state information network, and another one for queries to be conducted on open source which is programmed to ensure that any footprints left cannot be traced back to the FIU.

317. In terms of Art. 38 of the State Personnel Act government employees, including FIU staff, are required to maintain confidentiality concerning matters relating to their service, where such matters are to be kept secret by their nature or according to special provisions. The requirement applies indefinitely, even after termination of service. Furthermore, pursuant to Art. 310 of the Criminal Code, the disclosure of confidential information by government employees constitutes a criminal offense and is punishable by up to three years imprisonment. The FIU Act also contains provisions dealing with dissemination of information held by the FIU. Under Art. 10, dealing with the right to information, upon application and in accordance with the Public Information Act, the FIU shall release information to affected parties regarding data stored about their person only to the extent that no predominating public or private interests oppose the release of such information. The release of information under Art. 10 is subject to strict conditions which are set out under Art. 11. For instance, information may not be disclosed where the functions of the FIU or information sources would be jeopardised or the release of information would endanger public security or otherwise harm the welfare of the country.

Publication of Annual Reports (c. 26.8):

318. The FIU issues reports on its activities on an annual basis. These reports include information on statistics and typologies. The release of the annual reports receives considerable media attention since they are issued through a press conference hosted by the prime minister and the director of the FIU. On the day of the press conference, hard copies of the annual report are distributed to all business associations (11), all licensed banks (17), neighboring and German-speaking FIUs (Swiss, Austrian, German, and Luxembourg), all Liechtenstein embassies and Permanent Missions worldwide (8), and a few selected authorities from neighboring countries as well as NGOs (13). On the same morning, soft copies are made available as PDF downloads on the FIU's website.

319. The FIU informed the assessors that reporting entities regularly refer to the annual report, especially with regard to typologies provided in the report.

Membership of Egmont Group (c. 26.9):

320. The FIU joined the Egmont Group in 2001. It participates very actively in the activities of the Egmont Group including by chairing working groups and has acted as a membership sponsor for a number of other FIUs.

Egmont Principles of Exchange of Information Among FIUs (c. 26.10):

321. The FIU may request information from foreign FIUs where this is required for any purpose referred to under the FIU Act. The FIU may also, on a reciprocal basis, provide official, nonpublicly available information to foreign counterparts, provided that a number of conditions set out under the FIU Law are met. Art. 7, para. 2, letter (lett.) a) provides that the information requested must be in

accordance with the provisions of the FIU Act and must not violate *ordre public*, other essential national interests, and matters subject to secrecy or fiscal interests.

322. The authorities clarified that the last condition is intended to protect the fiscal interests of Liechtenstein and not those of the person in whose regard the request for information was made. In support of their position, the authorities referred to the clarifications provided by the Prime Minister of Liechtenstein in the parliamentary process leading up to the adoption of the FIU Act in 2001, where the purpose of this condition was explained in more detail. The FIU also explained that it has never refused to provide information on the basis of fiscal matters concerning a suspect. Examples of requests for information involving tax matters were made available to the assessment team for inspection. No similar discussion was undertaken during the parliamentary debate concerning the condition on secrecy. It is therefore unclear what the scope of this condition is. The authorities however pointed out that Art. 7, para. 2, lett. a) is intended to protect state secrets rather than financial or other information concerning a person subject to request. This is supported by the fact that the FIU regularly exchanges confidential information with other FIUs. To avoid ambiguity, the evaluation team is of the view that the reference to secrecy conditions in Art. 7 should be clarified further (with a specific reference to "state or official secrecy").

323. Conditions applicable to the requesting FIU must also be met. Before proceeding to exchange information, the FIU in Liechtenstein must ensure that the requesting FIU would grant a similar request from the FIU in Liechtenstein and guarantee that the information will only be used to combat ML, predicate offenses of ML, organised crime, and FT. Additionally, the Liechtenstein FIU must be satisfied that the information exchanged will only be forwarded after consultation with the Liechtenstein FIU and that the requesting FIU is subject to official and professional secrecy. Requests for information may only be acceded to where the Law on International Mutual Legal Assistance in Criminal Matters does not apply

324. The restriction emanating from Art. 4(3) of the FIU Act on the FIU's ability to obtain information subject to legal provisions relating to the protection of secrecy could also have an impact on the FIU's adherence to Egmont Group's Principles for Information Exchange Between Financial Intelligence Units (July 2013). This is the case, in particular, with respect to paras. 12 and 13 of the Principles which mirror the requirements under criterion 26.4 and 26.3 respectively.

325. In order to facilitate the exchange of information, the Director of the FIU may, after consultation with the Minister of Finance, conclude a memorandum of understanding (MoU) with other FIUs, subject to the approval of the government. The existence of a MoU is not, however, a prerequisite for the exchange of information with other FIUs. The FIU has so far signed a MoU with Belgium and Monaco (both in 2002;, Slovakia, Croatia and Lithuania (in 2003); Poland and San Marino (in 2004); Georgia (in 2004); Switzerland and Russia (in 2005); Romania and Chile (in 2006); France (in 2007); Ukraine and Canada (in 2008); and South Africa and Japan (in 2013). The FIU is currently negotiating MoUs with Australia, Serbia, Singapore, and the Republic of Moldova, as well as Bosnia and Herzegovina. The FIU is not subject to any compliance procedure in Egmont and has the full capacity to share financial and other kind of information in its possession with other Egmont FIUs.

Adequacy of Resources—FIU (R. 30)

326. The structure of the FIU is shown in the diagram below.

327. The FIU is headed by the director with the assistance of the deputy director. The main units of the FIU are the Strategic Analysis Unit and the Operational Analysis Unit. The Operational Analysis Unit is headed by the deputy director and is composed of four analysts. The Strategic Analysis Unit is composed of two analysts. An analyst from each unit is also assigned responsibilities within the other analysis unit. The International Affairs Unit is composed of one person. The FIU also includes a secretariat with one administrative officer. The total number of persons employed by the FIU is 10. The current staff constitutes a 40 percent increase since the last evaluation in 2008.

328. The internal structure of the FIU is defined by the director, and endorsed by the prime minister. It is incorporated within the overall system of structures of all government agencies by the public Office of Personnel. There is a specific process for this activity and respective software run by the Office of Personnel that manages the structuring process to ensure its legality and transparency. The FIU is an organisational unit (agency) with the same status as the Public Prosecutor's Office, the Office of Justice, and the Office of Foreign Affairs or the National Police. The budget of the FIU is a separate line in the budget of the Ministry for Presidential Affairs and Finance. It is elaborated by the head of FIU and agreed by the prime minister. The budget for every subsequent year is discussed and agreed upon six months in advance. The budget is proposed by the head of the FIU, who takes into consideration the salaries, training requirements, IT tools, and other resources of the FIU for the coming year. No cuts were imposed on the FIU's budget. The annual budgets are published in the annual activity report of the government, alongside with all other agencies. The rent of the premises is paid by the government from the central budget. During the onsite visit, the evaluators inspected the premises of the FIU and found that the FIU is provided with sufficient technical and other resource to properly conduct its functions.

329. All FIU employees are public officials employed on an indefinite basis. All staff has access to the necessary IT infrastructure, the FIU has access to commercial databases (LexisNexis, World-Check) and has developed, jointly with the Basel Institute on Governance, the Asset Recovery Intelligence System (ARIS) which allows for additional use of open source information and the detection of relevant networks.

330. The FIU conducts a pre-selection procedure with potential candidates with the aim to select competent and loyal staff members. It can conduct background checks with the police. The formal hiring procedure is conducted via the Office of Human and Administrative Resources in accordance with the rules for hiring public servants in the principality. The recruitment procedure is merit based and open also to foreign citizens. In fact, the current and all previous FIU directors and deputy directors were Swiss nationals. The background of the staff members reflects the operational needs of the FIU: lawyers and economists, police officers and experts with a university degree in international affairs, and staff with experience in compliance in the private sector. The staff fluctuation in the FIU is low; some current staff members had already joined the FIU at the date of its establishment. Foreign languages spoken by staff members include: English, French, Spanish, and Bosnian. The compensation of Liechtenstein public servants is adequate, and there is no competition with salaries in the private sector in this regard.

331. The FIU regularly conducts internal training courses for its staff members. The operational analysts have also attended the Swiss Criminal Analysis Course and the Swiss Police Institute in Neuchâtel (Switzerland).

332. For example, in 2012, the following specific in house training was organised (also attended by AML professionals of other agencies, such as the Office of the Public Prosecutor, the National Police and the FMA):

- Insurance Wrappers and related AML/CFT risks;
- Alternative Investment Funds Mechanisms (AIFM);
- Interbank Bank's payment systems; and
- Asset Recovery Intelligence System (ARIS).

333. The analysts attended training organised by third parties on:

- Business English and
- Open Source Intelligence.

334. On March 14, 2013, the ICQM (Institute for Compliance and Quality Management), jointly with the FIU, organised the Liechtenstein "Due Diligence Day" with presentations from the FIU, the FMA, the Office of the Public Prosecutor, a judge, and representatives of the private sector. The event was concluded by the Prime Minister. The FIU intends to organise this conference on an annual basis.

Statistics Table 5. Statistics (R.32) for Suspicious Activity Reports.

Statistics **Suspicious activity reports**	**2009**	**2010**	**2011**	**2012**	**2013** **Jan.–June**
Suspicious activity report DDA 17	235	328	289	317	145
Suspicious activity report DDA 17 (terrorism)	0	0	0	1	1
Thereof: attempted transactions	18	21	19	17	10
Market Manipulation (MMA 6/1)	21	19	6	7	7
TOTAL SAR	**256**	**347**	**295**	**325**	**163**
International Sanctions Act (ISG) Reports					
Request for Transaction Approval (Iran)	0	2	32	3	2
Money Transfer Report (Iran)	0	0	29	12	6
ISG Egypt	0	0	4	0	0
ISG Belarus	0	0	0	2	1
ISG Iran	0	0	0	2	1
ISG Libya	0	0	4	0	0
ISG Zimbabwe	0	0	1	0	1
ISG Syria	0	0	2	0	0
ISG Tunisia	0	0	2	0	0
Others	1	1	0	0	0

Total ISG Reports	1	3	74	19	11
Total Reports received by FIU	**257**	**350**	**369**	**344**	**174**
Suspicious activity and ISG reports by sector					
Banks	155	231	167	218	98
Professional trustees	82	88	106	83	38
Lawyers	5	6	6	2	4
Insurers	9	15	37	28	12
Insurance Mediators	0	0	0	1	0
Postal Service	0	0	0	0	15
Investment undertakings	1	1	0	0	1
Authorities	1	2	21	3	3
Auditors	1	2	31	4	0
Asset Management Companies	0	0	1	3	1
Dealers in precious goods	0	0	1	1	2
Others	3	5	1	0	0
Suspicious activity reports forwarded to the competent authorities					
Forwarded	205	292	197	200	87
Not forwarded	52	58	172	144	79

Effective Implementation

335. Overall, the FIU has well-established procedures and sufficient resources to conduct its functions properly, including staff which is highly experienced and professional. Since its establishment, the FIU has constantly evolved in response to ongoing developments in the ML/FT landscape.

336. As the national authority for ML/FT purposes, the FIU receives SARs from the financial and nonfinancial sector. Most SARs are received either by registered mail or delivered manually by the reporting entity. The FIU stated that the envelope containing the report does not always contain protective markings. The FIU Guideline provides a clear indication of the postal address where the report is to be sent and other useful information on the procedure for reporting. As mentioned previously, the FIU Guideline was issued in April 2013, two months before the onsite mission (with the legal basis for issuing guidance being introduced in August 2013). As a result, the assessors could not determine the effective implementation of this new, consolidated FIU Guideline. However, previous ad hoc guidance on the manner of reporting provided by the FIU has proven to be effective since all the reporting entities met onsite were aware of the procedure to be followed when submitting a SAR.

337. Upon receipt of a report, it is passed on to the deputy director or, in his absence, the director. The deputy director carries out a brief search in the database of the FIU to determine whether the SAR is connected to either a previous or an ongoing case. Where this is the case, the SAR is assigned to the analyst having worked or working on that case. Otherwise, the SAR is assigned depending on which analyst is present in the office and on the workload of each analyst.

338. When the SAR is assigned, the analyst inputs the case in the case management system which generates a reference number that is referred to in all communications with the reporting entity. A case is opened for every SAR received, even where another case relating to the same persons or transactions is ongoing. The SAR is reviewed in detail and searches are conducted in the FIU database to establish any links with other persons in the database.

339. At that stage, a preliminary analysis is carried out to prioritise the case. Various criteria are used in the prioritisation process, which are not being reproduced for confidentiality purposes. The prioritisation of the case determines the urgency with which the case is to be analysed and the timeframe for the conclusion of the case. Cases with a high priority are always brought to the attention of the director and the deputy director.

340. One of the main criteria used for prioritisation relates to the possibility that a court order be issued to freeze funds or assets. As explained in more detail under Recommendation 13, upon the submission of a SAR, the reporting entity is required to freeze any account it holds for the customer and is prohibited from taking any measures which may prejudice an eventual freezing order issued by the court. This requirement applies for a five-day period from the receipt of the SAR by the FIU unless the FIU decides to lift the freeze which it can do at any time and within a very short time. In light of this requirement, the primary concern of the analyst within the five-day period from the receipt of the SAR is to determine whether any suspicious funds or assets are at risk of being transferred out of Liechtenstein. In such cases an expedited analysis is carried out. This involves the

gathering of information from various sources, including from foreign FIUs, to substantiate the suspicion and forward the case to the OPP with a view to submitting an application for a freezing order to the investigating judge.

341. Where the SAR does not trigger an expedited analysis, the analysis is conducted in accordance with the level of priority assigned to it during the preliminary analysis. In all cases, within the same day of the receipt of the SAR, a confirmation is sent to the reporting entity having filed the SAR and an indication of the expiry of the five-day freezing period is included. In general, the analysis of cases which are not assigned a high priority does not take longer than six months.

342. The letter of confirmation would also generally include any requests for further information from the reporting entity. The FIU explained that the cases where the reporting entity is requested to provide additional information have decreased over time, as a result of an improvement in the reporting forms designed by the FIU. As stated previously, banks, insurance companies, TCSPs, and lawyers are required to complete a specific reporting form, which is tailored specifically for the information that is maintained by such entities. All other entities are required to complete and submit a general reporting form. Where additional information is requested, Art. 26, para. 2 states that such information shall be submitted without delay. The FIU pointed out that it had never encountered instances where such information was not provided within the time required by the FIU.

343. Information received in the SAR and any subsequent additional information is input manually in the database. This is often a laborious process, especially when bank account information is involved, which may take up valuable analytical time and may adversely affect the prompt analysis of certain urgent cases. The FIU agreed that the current procedure is not ideal, and more efficient alternatives are being considered, although they did note that the manual input of data may have its benefits as the analyst would be familiarising himself with and assimilating the data during the process.

344. The analysis is initiated during data input. The analysis also involves gathering information from different public and confidential sources to build up a profile of the customer and establish links between different entities involved. Transaction flows are also analysed in detail to determine the origin and destination of funds. Any links to predicate offenses are also established, where they are clear. The analysts have at their disposal various IT tools to facilitate the analytical process, including I2, ARIS, WorldCheck, and LexisNexis. In most cases, the data entered in the FIU databases is migrated into I2 to create visualisation charts.

345. The FIU remarked that one of the major challenges in the analytical process is the significant reliance on a large number of cases on the receipt of information from foreign FIUs. Such information is not always provided on a timely basis and may as a consequence delay the conclusion of a case.

346. As mentioned previously, the FIU did not have an express power to obtain additional information from other reporting entities until an amendment was carried out to Art. 26 of the DDO two months after the onsite visit. The FIU maintained that the previous provision was sufficient to enable the FIU to obtain additional information and stressed that requests for additional information to reporting entities were sent regularly. The regularity of such requests could not be confirmed since statistics on this matter are not maintained. Examples of documentary evidence indicating that such

requests are made were provided to the assessors for inspection. In the example provided, the reporting entity replied to the FIU within a short period of time (seven days). The FIU stated that in all instances where a request for additional information was sent to an entity other than the entity having filed a SAR, information was invariably provided. Nevertheless, during the onsite mission, most of the reporting entities interviewed stated that they had never received such requests from the FIU. They also pointed out that they would not provide such information since the legal basis for requests of such nature was unclear (prior to the amendment of Art. 26 in August 2013).

347. The deputy director holds weekly meetings with all the analysts collectively to discuss the ongoing analysis of cases. During the meetings discussions are held to determine how the analysis of each case is to proceed and whether any particular measures are warranted. Given the varied background of the analysts (banking, economics, law enforcement, law, and accountancy) the pooling of ideas often serves to enhance the analysis. Meetings also serve to discuss new ML/FT trends, typologies, and vulnerabilities.

348. Upon the conclusion of the analysis, the analyst drafts an analytical report. A template report is used in all cases. The report is divided into various sections and contains information on the facts of the case, reference to any additional information gathered or obtained by the FIU, the analysis, and conclusion. The analysis part contains the outcome of the analysis process, including the evaluation by the FIU, an indication of possible predicate offenses, and possible methods and trends. The conclusion refers to the validation of the suspicion and contains recommendations and requests (e.g. to open a criminal investigation, to freeze an account, etc).

349. The analytical report is discussed between the analyst and the deputy director. The ultimate decision on whether a case is to be forwarded to the OPP rests with the deputy director. During discussions held onsite, the assessors enquired whether analytical reports always contain an indication of the underlying predicate offense and whether this is needed to substantiate a ML/FT suspicion. In response, the FIU referred to cases where the suspicion was based on an analysis of transaction patterns, which although were not directly linked to any criminal activity, clearly indicated that existence of ML activity.

350. A number of SARs are received by the FIU following a foreign request for mutual legal assistance which alerts the reporting entity to possible suspicious activities of the customer. The assessors enquired whether any additional value is added to the SAR by the FIU through the analytical process. Reference was made to a case, where the analyst identified a person who had been receiving funds from the suspect. This person had not been previously identified by the foreign authorities. The intelligence on this person was forwarded to the PPO for onward transmission to the foreign authorities.

351. Where an analytical report is disseminated to the OPP, the report is accompanied by various annexes including, the visualisation charts, transaction overviews and documents of FIU research.

352. The table below indicates the number of cases forwarded by the FIU to the Office of the Public Prosecutor.

Year	SARs (ML/FT)	Cases opened (ML/FT)	SARs forwarded to PPO	Percentage of SARs forwarded	Not forwarded to PPO	Investigations[34]	Indictments	Convictions
2009	235	235	205 ML/FT: 183 ISA: 0 MA: 22	87%	52	50	0	0
2010	328	328	292 ML/FT: 273 ISA: 1 MA: 18	89%	58	50	2	0
2011	289	289	197 ML/FT: 189 ISA: 0 MA: 8	68%	172	55	2	0
2012	318	318	200 ML/FT: 197 ISA: 0 MA: 8	62%	144	50	1	0

[34] An investigation often includes several SARs.

Jan-March 2013	61	61	31 ML/FT: 30 ISA: 0 MA: 1	51%	36	N/A	1	0

353. The percentage of SARs forwarded to the Office of the Public Prosecutor in relation to the number of SARs received was very high in 2009 and 2010. Although the percentages decreased in successive years, the figures are still relatively substantial, especially when compared to the situation in other countries. The FIU explained that in 2009–2010, the level of filtering that was conducted through the analytical process was not sufficiently extensive. As a result, a large majority of SARs generated an analytical report which was submitted to the Office of the Public Prosecutor, notwithstanding the fact that the analysis had not substantiated the ML/FT analysis to the required degree. Upon the initial investigation, following the receipt of such reports, the prosecutor could not pursue these cases further as there was no sufficient indication of a predicate or ML offense in Liechtenstein. Since 2011, following discussions between the FIU and the OPP, the analytical process of the FIU has been enhanced to address the matter. This resulted in fewer analytical reports being disseminated to the OPP, which contained sounder and more concrete conclusions.

354. During discussions held onsite, the representatives from the OPP expressed satisfaction with the improvement of the analytical process of the FIU. They indicated that the quality of analytical reports has increased over the years. In some cases, although the suspicion of predicate/ML offense could already be identified, the analytical report was referred to the OPP too early in the process and had to be sent back to the FIU to be substantiated with further information. The representatives of the OPP referred to instances where the FIU had identified new phenomena that the OPP had not been aware of. For instance, a case was referred where the FIU had identified a network of money mules channeling funds through Liechtenstein. Such a case had never been previously identified. The case is still under investigation.

355. In addition to the ongoing informal cooperation between the OPP and the FIU, the representatives from the OPP also referred to formal meetings held with the FIU on a regular basis (on average bimonthly). In these meetings, specific cases are discussed with a view to identifying any issues relating to analytical matters and measures to address those issues. These meetings also serve as a platform for the discussion of new trends, typologies and vulnerabilities in ML/FT and to share best practices.

356. Referring to the figures in the table above, although, at a first glance, the number of investigations compared with the number of SARs sent by the FIU to the OP appears to be rather low—both the representatives of the OPP and the FIU explained that an investigation case file would often contain various analytical reports which are connected. The representatives of the OPP explained that their statistics are case driven and that 90 percent of the SARs lead to an investigation. This explains the difference between the number of investigations and the number of notifications by

the FIU. The assessors were informed that the OPP provides systematic feedback in writing on every case opened by the OPP, in addition to the discussions held at regular intervals referred to in the previous paragraph. An in-depth analysis was conducted to evaluate the dissemination process, which led the FIU to revise the criteria for dissemination. This has resulted in an improvement of the quality of notifications disseminated to the OPP.

357. During the onsite, the assessors expressed some concerns regarding the number of indictments and absence of convictions based on a notification by the FIU. The authorities, as in the previous assessment, cited the absence of territorial jurisdiction to prosecute since a large majority of cases referred by the FIU concern a foreign person and a predicate/ML offense which has taken place abroad. It is the view of the FIU that, in light of the fact that most of the cases that are processed involve a nonresident person, the effectiveness of the FIU's role should not simply be measured against the number of prosecutions and convictions in Liechtenstein, but should also be viewed in the context of the successful pursuit of criminal activity by foreign authorities following assistance by the FIU to foreign FIUs. However, it was noted that the FIU does not regularly request feedback from foreign FIUs to determine the usefulness of information provided.

358. In addition to tactical and operational analysis, the FIU also conducts strategic analysis through its Strategic Analysis Department (consisting of two analysts). The FIU pointed out that strategic analysis is conducted on an ongoing basis. All cases are reviewed to determine whether any links exist. These cases are then extracted and analysed in more detail to identify any emerging patterns relating to ML/FT typologies or methods. Strategic analysis is also utilised to understand whether the flow of funds is connected to any particular jurisdiction or an individual reporting entity, whether patterns in predicate offenses exist, etc. Reports, which are confidential in nature, are issued regularly and communicated to the government. The outcome is also generally shared with other competent authorities, including the OPP, the police, and the FMA. Reporting entities are sometimes also alerted to certain risks and vulnerabilities identified through strategic analysis. This is generally done either through training programs, meetings with reporting entities, and also through the publication of the annual reports. The assessors were satisfied that the FIU is properly structured, funded, staffed, and provided with sufficient technical and other resources to perform its functions effectively. The staff of the FIU was found to be appropriately skilled and maintains high professional standards. The procedure for the employment of FIU staff ensures that they are persons of high integrity and suitably qualified. Adequate training to the officers of the FIU is provided on an ongoing basis. It was also noted that the statistics maintained by the FIU are in line with the requirements under Recommendation 32.

3.6.2. Recommendations and Comments

- The FIU should take measures to ensure that when SARs are submitted they always contain protective markings;

- The provisions in the FIU Act which deal with the FIU's access to information from other competent authorities should require that such information is provided on a timely basis;

- The provisions (in sector-specific laws) restricting the exchange of information between the FMA and the FIU should be revised;

- Art. 6 of the FIU Act should be amended to clearly state that competent authorities are required to provide information to the FIU when they are so requested;

- The reference in Art. 4, para. 3 of the FIU Act which restricts the power of the FIU to obtain only information which is not subject to legal provisions relating to the protection of secrecy should be removed to avoid any ambiguity. The authorities should also consider introducing a provision in the law which states that any information that is provided by reporting entities to the FIU for any purpose shall not be subject to any legal provisions on secrecy;

- The authorities should consider including specific sanctions in the DDO for failure to provide additional information when requested by the FIU;

- The FIU should consider implementing a system whereby information provided by reporting entity is submitted electronically and integrated automatically into the IT system of the FIU;

- The FIU should not be required to disseminate the SAR itself to the OPP as stated in Art. 5, para. 1, lett. b) of the FIU Act;

- Authorities could consider conducting a review to determine whether the low number of prosecutions and absence of convictions resulting from FIU notifications is related to the quality of the disseminated reports. The FIU should regularly request feedback from foreign FIUs on the quality and usefulness of information provided;

- Reference to secrecy and fiscal matters within the power of the FIU to exchange information with foreign FIUs should be clarified.

3.6.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	PC	• 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; • 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; • 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);

		Effectiveness • 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.

3.7. Cross-Border Declaration or Disclosure (SR.IX—rated NC in the 2007 MER)

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress since the last ME

359. The 2007 MER noted the lack of a disclosure or declaration system to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing. In June 2011, Liechtenstein introduced a disclosure system; previously, a framework treaty was concluded between Liechtenstein and Switzerland on police cooperation in the border area (2009/217: hereinafter: framework treaty). The agreement entered into force on December 19, 2011. On December 18, 2012, the National Police and the Swiss Border Guard Corps signed an implementing agreement based on the aforementioned framework treaty. In June 2006, Liechtenstein concluded the negotiations for an association with the Schengen system and the adoption of the Schengen acquis.

3.7.1. Description and Analysis

Legal Framework:

- Police Act and
- Framework treaty between Liechtenstein and Switzerland on police cooperation in the border area, and implementing agreements.

Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):

360. Liechtenstein relies on a disclosure system, introduced in June 2011, but, because of delays in the Schengen membership process, it has been operational only since January 2013, with the entry into force of an implementing agreement between Switzerland and Liechtenstein, as part of the framework treaty on police cooperation at the border between Liechtenstein and Austria.

361. In 1923, Liechtenstein entered into a customs treaty with Switzerland, which established a Customs union between the two countries. Based on this framework, most competencies and tasks in relation to Liechtenstein's customs and border controls are delegated to the Swiss authorities, and Swiss customs laws made directly applicable in Liechtenstein.

362. The Police Act (Art. 25e) has introduced cash controls and empowered the National Police to demand from any person information on the origin and intended use of the cash, as well as the

beneficial owner, in the case of import, export, and transit information of cash in the amount of at least CHF 10,000 or equivalent in foreign currency.[35]

363. The definition of "cash"[36] includes also "bearer negotiable instruments," in line with the definition of the FATF Glossary. 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. As far as mail is concerned, authorities stated that all incoming/outgoing mail and freight go through the Swiss mail/freight distribution centers. However, there is no clear requirement underpinning this interpretation.

364. There is a form that is required to be filled and that includes the identification data and the amount/type of currency.

365. Based on the framework treaty with Switzerland on police cooperation in the border area, and the associated execution and implementation agreements (2008 and 2012), the National Police has delegated its cash control powers to the Swiss Border Guard Corps (SBGC). Art. 1(c) of the 2012 implementing agreement stipulates that the SBGC is empowered, in application of Art. 25e of the Police Act, to carry out cash controls along the Liechtenstein border with Austria and to apply the SBGC's service regulations in that regard.

366. There are no cash controls made by the SBGC at the border with Switzerland. Authorities explained that this is because of the 1923 customs treaty, which, for customs purposes, considers Liechtenstein as a Swiss "Canton." However, there are no provisions in the customs treaty that would prevent or explicitly prohibit cash control at the border between the two countries, since

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[35] Art. 25e 1) To prevent and combat money laundering and terrorist financing, the National Police may—in the context of controlling cross-border cash transactions—demand information of persons concerning the following:

a) the person questioned;

b) the import, export, and transit of cash in the amount of at least 10,000 francs or the equivalent in a foreign currency;

c) the origin and intended use of the cash; and

d) the beneficial owner."

[36] Art. 25e, para. 5): "The following shall be considered cash:

a) Cash in the form of banknotes or coins, irrespective of the currency, provided they are circulated as means of payment; and

b) Transferable bearer instruments, stocks, bonds, cheques, and similar securities."

cash controls are envisaged by the Police Act as requirements to prevent ML and FT, and not as customs-related requirements. Hence, the disclosure requirement is de facto not applied at this border.

Request Information on Origin and Use of Currency (c. IX.2):

367. The National Police is empowered to demand information concerning the origin and intended use of cash as well as the beneficial owner (Art. 25e, para. 1(c) and (d)). In the case of suspicion of money laundering or terrorist financing, information may also be demanded if the amount of cash does not reach the threshold of CHF 10,000 (para. 2).

Restraint of Currency (c. IX.3):

368. There are provisions in place that empower the police to seize cash for the purpose of securing evidence for criminal proceedings as well as in view of confiscation, to prevent, inter alia, the commission of a crime or to avert a risk.[37] These provisions are more restrictive than the broader power to "stop or restrain"; the scope of application is also different than the two circumstances envisaged by SRIX (a. suspicion of ML or FT or b. when there is a false declaration or disclosure). The provisions have never been tested in practice safe for one case in which two foreigners were stopped with 25,000 euros in cash (but then released as the police could not confirm that the currency was proceeds of crime).

Retention of Information of Currency and Identification Data by Authorities when appropriate (including in Supra-National Approach) (c. IX.4)

369. Art. 1(c) (2) and (3) of the implementing agreement provide that in the case of a truthful disclosure the control form is transmitted to the National Police (which stores it in a database and might use it as appropriate); whereas in the case of false or lack of disclosure (including when there are suspicions of ML or FT) the National Police must be called in. Since the refusal of information and the false provision of information result in charges filed with the Office of the Public Prosecutor

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[37] Art. 25e, para. 3): "The National Police may seize cash for the purpose of securing evidence for criminal proceedings as well as in view of expected confiscation in accordance with Art. 25c."

Art. 25c:
1) The National Police may seize property or assets in order to:

a) prevent the commission of a criminal offense;

b) avert a risk;

c) protect the owner or lawful holder against loss of or damage to the property.

2) Property or assets which may be significant for the criminal investigation, or which are subject to forfeiture, confiscation or siphoning-off of enrichment, shall also be seized insofar as such seizure is not permitted to be deferred.

(Art. 36(c) of the Police Act), these data are available to the prosecution authorities (as well as to the FIU, to which is reported by the National Police).

Access to Information by FIU (including in Supra-National Approach) (c. IX.5):

370. Art. 25e, para. 4, requires the National Police to notify the FIU without delay of all suspicious cases, and to report such cases to the Office of the Public Prosecutor. The provision is very broad ("suspicion" is not defined), but authorities clarified that this would apply to both the case of lack of/false disclosure as well as the case of suspicions of ML/FT.

Domestic Cooperation between Customs, Immigration, and Related Authorities (c. IX.6):

371. Given that the disclosure system has become operational only since January 2013, and that there have been no cases of disclosure,[38] it is not possible to determine whether, in this specific area, cooperation is adequate or inadequate. The legal framework for cooperation is in place.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (including in Supra-National Approach) (c. IX.7):

372. There are no specific international measures concerning cash controls (such as ensuring that the information on cash disclosures is shared internationally with foreign competent authorities), however there is a broad framework for international cooperation: the tri-lateral police cooperation treaty between Liechtenstein, Switzerland, and Austria on cross-border cooperation between police and customs authorities of April 27, 1999 covers the prevention of danger and the suppression of crime, including cooperation with respect to requests and the transmission of information without requests, special cross-border investigative measures such as controlled delivery (e.g. of cash and bearer negotiable instruments) and cross-border observation, the use of joint control, observation, and investigation groups, and joint search operations.

373. The 2009 framework treaty between Liechtenstein and Switzerland on police cooperation in the border area and the associated execution agreement govern border police cooperation and powers as well as mutual exchange of information with the Swiss Border Guard Corps, which controls Liechtenstein's external borders.

374. Art. 35 et seq. of the Police Act (international administrative assistance) authorise the National Police to exchange information with the competent foreign law enforcement authorities also on the findings of cash controls—with the exception of pure fiscal matters, which do not fall within the competence of the National Police. Since the National Police is the only police authority in Liechtenstein that exchanges information internationally with other police authorities, this framework could be also used to ensure that cash control information is shared with foreign investigation authorities where needed. However, the disclosure system has only become operational since

[38] Authorities stated that, after the onsite mission (on July 1), there was a case of disclosure.

January 2013, and there have not been disclosures, so, with specific regard to SR.IX, there are not specific examples of concrete cases.

Sanctions for Making False Declarations/Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8):

375. Where persons refuse to provide information on cash or provide false information, the National Police files charges with the Office of the Public Prosecutor for an infraction, based on Art. 36(c) of the Police Act. The infraction may be punished with CHF 5,000 or, if the funds are uncollectible, an alternative term of imprisonment of up to one month for natural persons. Since violations of cash control-related provisions constitute infractions, these penalties are not applicable in the case of legal persons (legal persons are only subject for criminal responsibilities concerning crimes and misdemeanors). Sanctions are not proportionate as they do not take into account the amount of the undeclared or falsely declared funds. No violations of the cash control requirements have ever been detected (since the regime became operational in January 2013), hence it is not possible to establish whether sanctions are effective or dissuasive.

Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):

376. If the cross-border transportation of the currency consists of actions that constitute criminal conduct under the CC provisions on ML or FT, the authorities may institute criminal proceedings and the sanctions are those that apply in the case of ML and/or FT. Those sanctions are addressed under Criterion 2.5 in R. 1 (2007 MER) and Criterion II.4 in the section on SR.II.

Confiscation of Currency Related to ML/FT (applying c. 3.1-3.6 in R.3, c. IX.10):

377. If the cross-border transportation of the currency consists of actions that constitute ML or FT has occurred, the powers to freeze assets and to confiscate the currency are those that are available under the CC and CPC provisions in criminal cases. These are addressed in the discussion of R.3 (Criteria 3.1–3.6).

Confiscation of Currency Pursuant to UN SCRs (applying c. III.1–III.10 in SR.III, c. IX.11):

378. If assets carried by persons who are physically moving currency or bearer negotiable instruments across the border are those of designated persons or entities, the assets are subject to freezing under the laws and procedures set forth in the discussion in this report in relation to SR.III. The deficiencies noted in relation to SRIII apply accordingly.

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):

379. There are no specific notification mechanisms concerning unusual movements of precious metals and stones; in these circumstances, if the movement gives rise to a suspicion of ML or FT or other illegal activities, international cooperation provisions would apply. However, such a case has never been detected, so these provisions have not been tested in practice.

Safeguards for Proper Use of Information (including in Supra-National Approach) (c. IX.13):

380. Police information systems have to be protected by adequate technical and organisational measures according to article 9 of the data protection/security act in connection with Art. 9–12 of the Data Protection Ordinance. The National Police issued at October 27, 2011 the Police Instruction No. 2011-006 on 'The Use of IT-Information Systems, Data Safeguards and Data Protection" in order to be comply with data protection legislation.

Training, Data Collection, Enforcement and Targeting Programs (including in Supra-National Approach) (c. IX.14):

381. The cash control requirements are operational only since January 2013 and, except for one case which occurred after the onsite visit, no other disclosures have been made. No specific targeted training programs exist with regard to cash couriers; however two designated National Police Officers have been trained on AML/CFT.

Supra-National Approach: Timely Access to Information (c. IX.15):

382. Not applicable.

Additional Element—Implementation of SR.IX Best Practices (c. IX.16):

383. No SR.IX best practices are being implemented.[39]

Additional Element—Computerisation of Database and Accessible to Competent Authorities (c. IX.17):

384. The incoming data concerning cash controls are to be maintained by the FIU and the National Police in a database.

Statistics (R.32)

385. There is only one case of disclosure, which authorities have reported happened after the onsite visit. There are no statistics on the number of cases in which the SBGC has requested persons crossing the border to disclose whether they were transporting currency in excess of the threshold.

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[39] The authorities stated that, after the onsite mission the National Police are providing information on the cross-border currency transportation provisions and the disclosure system on its website (http://www.landespolizei.li/News/Newsdetail.aspx?shmid=392&shact=1640390029&shmiid=0TEeOhT5VGs__eql__).

Adequacy of Resources—Customs (R.30)

386. Liechtenstein does not have customs. The responsibility for implementing cash control related requirements is of the SBGC and the National Police. For the National Police, see analysis under Recommendation 30.

Effective Implementation

387. The cash control requirements have only become operational in January 2013. As mentioned earlier, these requirements are, de facto, not applied at the border between Liechtenstein and Switzerland. Only one disclosure (after the onsite mission) has been made since the requirements are operational, and the relevant legal framework has not been tested in practice. No statistics are available on the number of cases in which the SBGC have asked persons crossing the border between Austria and Switzerland, whether they are carrying currency in excess of the threshold.

388. Authorities are of the opinion that physical transportation of currency is rare, as cash transactions are looked at suspiciously by financial institutions. However, meeting with the private sectors indicated that the use of cash is not uncommon in the case of legal entities formation, where often nonresidents bring the startup capital to Liechtenstein in cash (this is the case of foundations—the required minimum capital is CHF 30,000). All these elements suggest that the system is not effective and that the risk of cash being transported into Liechtenstein is not negligible. The authorities stated that have no evidence of such instances and strongly believe that the deposit of the startup capital of a foundation is very rarely done in cash. In addition, the authorities refer to the fact that the amount of new foundations has been drastically reduced in the last years.

3.7.2. Recommendations and Comments

389. Authorities should:

- Apply the requirements to containerised cargo and to the mailing of currency;
- Align the seizure requirements to fully comply with the power to stop or restrain the currency when there is a suspicion of ML/FT or when there is a false disclosure;
- Introduce sanctions that are proportionate to the undeclared amount of funds (for example by adding, to the existing fixed sanction, a pecuniary sanction expressed in percentage to the undeclared amount) and establish sanctions in the case of legal persons;
- Ensure effective implementation of the disclosure requirements at the border with Switzerland;
- Establish training program and implement SR.IX best practices.

3.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**PC**	• 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; • The conditions to seize are more restrictive/different than the FATF requirement to "stop or restrain"; • Sanctions are not proportionate, and they are not applicable sanctions in the case of legal persons; • The shortcomings identified in connection with R.3 and SR.III apply in the context of SR.IX; **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.

4. PREVENTATIVE MEASURES—FINANCIAL INSTITUTIONS

4.1. Customer Due Diligence and Record Keeping

Law, Regulation, Other Enforceable Means

390. The framework that regulates CDD requirements and preventive measures for AML/CFT consist mainly of the following documents:

- The Due Diligence Act;
- The Due Diligence Ordinance;
- FMA Guidelines 2013/1 on risk based approach in accordance with the DDA; and 2009/1 on inspections by mandated due diligence auditors and the FMA;
- FMA Communication on Third Countries with Equivalent Regulations; and
- Various sector specific instructions issued by the FMA to assist FIs/DNFBPs in implementing the provisions of the DDA and DDO.

391. As discussed in the 2007 MER, the DDA constitutes primary legislation and government ordinances such as the DDO have the status of secondary legislation. Guidelines and communications issued by the FMA, in particular guidelines 2013/1 about the risk-based approach to the application of due diligence requirements provide further clarification on how the DDA and DDO are to be interpreted. Both under the DDA and the FMAA, the FMA may issue orders, guidelines and

recommendations for purposes of the DDA and with respect to all types of FIs and DNFBPs. Under the FMAA, this power is set out through Art. 4, which grants the FMA express responsibility to supervise and execute the provisions of the DDA. While Art. 28 (1) and (3) of the DDA grant the FMA the power to issue such guidelines, Art. 31 does not set out any sanctions for failure by FIs or DNFBPs to comply with the obligations set out in an FMA guideline. The authorities are of the view that the sanctions set out in the DDA could be applied in case of a violation of the FMA guidelines, as the purpose of the guidelines is to further specify obligations set out in the DDA. At the time of the assessment, however, any violations of the FMA guidelines occurred and thus were sanctioned only in tandem with a violation of a DDA or DDO provision. Authorities stated that they have not detected cases in which the conduct of an FI/DNFBP violated a specific obligation that was set out in the FMA's guideline, but not the DDA or DDO. Accordingly, the authorities view that guidelines are independently sanctionable based on the provisions of the DDA has so far not been confirmed through practical cases. Art. 25 (3) of the FMAA also grants the FMA the power to "issue decrees, guidelines and recommendations," but only FMA decrees imposing a monetary fine are considered enforceable. Accordingly, the FMA guidance is not considered binding and enforceable and thus does not constitute "other enforceable means" for the purpose of this assessment.

392. In addition to national laws, EU Directives and EC Regulations that have been taken over into the EEA Agreement apply to Liechtenstein. EC Regulations are directly binding, whereas EU Directives have to be transposed into national law.

Scope

393. Liechtenstein has previously prescribed the scope of the DDA based on a two-pronged test. First, the law only covered persons/institutions that held one of the licenses specified in the law. Secondly, an otherwise covered person/institution would be subject to the law only when carrying out or facilitating a specified activity/transaction. This approach has been changed in 2008. In most cases, the application of the law is now determined based on the type of license a person/institution holds. Only in few instances is the application of the law limited to circumstances where an otherwise covered FI/DNFBP carries out specific transactions or provides specific services. The scope of the DDO is defined widely to cover any person who is licensed to carry out financial activities as defined under the FATF standard.

394. The table below indicates for each financial activity as defined under the FATF standard the FI that may perform such activity in Liechtenstein:

Type of financial activity	Type of financial institution that performs this activity	AML/CFT + prudential Supervisor
Acceptance of deposits and other repayable funds from the public (including private banking).	Banks Postal Service AG	FMA

Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting).	Banks
Financial leasing (other than financial leasing arrangements in relation to consumer products).	Banks
The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds).	Banks Postal Service AG
Issuing and managing means of payment (e.g. credit and debit cards, checks, traveler's checks, money orders and bankers' drafts, electronic money).	Banks Electronic money institutions
Financial guarantees and commitments.	Banks
Trading in: i. money market instruments (checks, bills, CDs, derivatives etc.); ii. foreign exchange; iii. exchange, interest rate and index instruments; iv. transferable securities; and v. commodity futures trading.	Banks Fund management companies
Participation in securities issues and the provision of financial services related to such issues.	Banks Management companies
Individual and collective portfolio management.	Banks, Asset management companies

Safekeeping and administration of cash or liquid securities on behalf of other persons.	Banks Fund management companies Asset management companies	
Otherwise investing, administering or managing funds or money on behalf of other persons.	Banks Management companies Asset management companies	
Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)).	Life insurance companies Life insurance intermediaries	
Money and currency changing.	Banks Foreign exchange offices	

395. The table below indicates the number of FI in each category, and the total assets held by such entities:

Financial institutions subject to the DDA (December 2012)		
	Number	**Assets under management (billion CHF)**
Banks	17	117.7
Asset management companies	109	23.52
Fund Management companies - Active fund management companies[40] - Active fund management companies (exempted from DDA)[41]	 2 18	 0.55 36.65

[40] Management companies keeping unit accounts or issuing physical units (see Art. 4 (b) DDA)

Life Insurance Companies	21	premiums: 33
Life Insurance Intermediaries	49	-
Liechtenstein Postal service (payment services)	1	-
E-Money Institution	1	-

4.2. Risk of Money Laundering or Financing of Terrorism

396. Art. 4 sets out the following scope limitations of the DDA. Accordingly, the following entities/persons/activities do not fall under the DDA:

- Paragraph (a): An institution/person that is otherwise covered under the law but operates exclusively in the field of occupational old age, disability, and survivors provision;

- Paragraph (b): contractual relationships of a management company of an undertaking for collective investment in transferable securities or of an investment undertaking for other values or real estate which neither keeps unit accounts nor issued physical units and thus does not itself accept any assets; and

- Paragraph (c): persons who engage in activities referred to in Art. 3 only on an occasional and very limited basis and where the risks of ML and FT are low, provided that the activity carried out is not the main activity, but is supplementary to the main activity, the activity is only offered to contracting parties in connection with the main activity but is not offered to the public in general, and the individual activity does not exceed the value of CHF 1,000 and no more than 100 transactions per year are carried out.

397. In practice, the exemption under para. (b) all but two investment undertakings from the obligations under the DDA, as the majority of them do not maintain share registers and client accounts. The scope limitation is also in line with the wording under the Third EU Directive on money laundering, which exempts collective investment undertaking that do not market their shares or units from the preventive measures regime. For exemptions under para. (c) the authorities indicated that there had so far been only one case in which an Art. 4 exemption was claimed, and thus they would not consider this exemption as very relevant in practice.

398. In addition Art. 10 of the DDA prescribes a list of persons/business transactions to which CDD measures do not have to be applied. As discussed under Recommendation 5 below, while

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[41] Management companies not keeping unit accounts or issuing physical units.

Art. 10 of the DDA is headed "simplified CDD," the language of Art. 10 clearly goes beyond establishing simplified CDD procedures. Persons subject to the law are exempted from carrying out identification and verification measures on the contracting party and beneficial owners, from establishing a risk profile, and from monitoring the business relationship in accordance with Art. 5 (1) of the DDA. This understanding is also confirmed in FMA Guideline 2013/1 on risk-based approach. Accordingly, in terms of substance, Art.10 sets out a blanket exemption for the application of CDD measures and is to be treated as a scope limitation for at least parts of the DDA. A person subject to the law that is otherwise covered by the exemption under Art. 10 still has to apply the full range of CDD measures in case of a suspicion of ML, a predicate offense, organised crime or FT, or in cases involving a higher risk pursuant to Art. 11 of the DDA. However, the assessors wonder how likely it is that in practice a person subject to the law forms a grounded suspicion in the absence of any CDD information, and how a person subject to the law could possibly identify a high risk situation without any identification and verification information on the contracting party or beneficial owner.

399. The authorities indicated that the exemptions under Arts. 4 and 10 were not defined on the basis of a national or sector-specific risk assessment or on the basis of a finding of low risk in relation to each item listed under the provisions, but were taken over from relevant EU Directives. The authorities indicated that, based on Liechtenstein's size, it would be more efficient to adopt the findings of an EU-wide risk assessment rather than to carry out an isolated risk assessment for Liechtenstein. The assessors recognise the practicality of this approach, but still consider it important that Liechtenstein reviews and, if necessary, custom tailors any potential scope limitations of its AML/CFT framework in light of the specific features of Liechtenstein's financial service industry. To simply adopt the findings of supranational risk assessments does not seem to be in line with the FATF standard. In addition, it should be noted that Art. 10 of the DDA ignores an important safeguard that is set out in the EU Directive, which is that in all cases FIs and DNFBPs must first gather sufficient information about a potential customer to establish whether any of the narrowly defined exemptions for CDD applies. Under the Directive, all customers are thus subject to a certain minimum CDD process.

400. Specific references to "risk" are found throughout the various provisions of the DDA and further prescribed in the DDO and FMA Guideline 2013/1. Persons subject to the law are required to establish a risk-based business profile for each customer, to categorise each customer and transaction as low, medium, or high risk, and to monitor each business relationship and transaction based on the risks involved. Risk-based elements are also set out with respect to the identification and verification measures for beneficial owners. In the course of an onsite inspection, FMA-nominated auditors are required to determine whether the risk assessment conducted by an FI/DNFBP is appropriate. The FMA indicated that there have not been many instances in which the risk assessment was found to be inappropriate, but that there was still room for improvement also in terms of the auditor's level of experience in making such judgment calls.

401. According to the DDA, non-face-to-face customers, PEPs, cross-border correspondent banking relationships and business relationships, and transactions with contracting parties or beneficial owners in high-risk countries, or involving complex structures, complex and unusual transactions, or transactions without any apparent or visible lawful purpose are in all cases to be considered high risk. Apart from these mandatory cases, the law leaves it up to each FI or DNFBP to

determine the specific risks involved in a business relationship or transaction. FMA Guideline 2013/1 advises that risk is to be evaluated by each individual FI/DNFBP and on a regular basis. Pursuant to Art. 23 of the DDO, higher risk scenarios shall be identified based on the registered office or place of residence of the contracting party or beneficial owner, or their nationality; based on the contracting party's or beneficial owner's business activity; the nature of the products or services requested, the level and type of assets deposited, the level of inflows and outflows of assets, the country of origin or destination of payments, and on whether the contracting party of beneficial owner is a PEP. Pursuant to the FMA guideline, the categories based on which risk is to be analysed must at a minimum include "countries," "customers," and "products/services." The analysis of further categories is encouraged by the FMA. In addition, the law sets out a list of criteria for determining cases for determining high or low risk. The indicators are categorised according to "general indicators," "cash indicators," "bank accounts and custody accounts," "fiduciary accounts," "insurance transactions," and "terrorist financing." While the various categories address both customer and service/product risks, they are phrased in very specific terms and thus target very specific circumstances. For example, the involvement of foreign asset management vehicles or companies with nominee shareholder or bearer shares are not, per se, listed as high risk indicators, but only in cases where the a legal entity is not entered in the public registry and from which no certification or other document of probative value of its existence can be obtained. Equally, private banking relationships are also not listed as high risk indicators. The FMA stated that the basic CDD requirements applied under Art. 5 of the DDA would go beyond what the international standard requires for "normal risk scenarios." For example, while the FATF standard would require that FIs/DNFBPs establish the source of wealth and the source of funds only with respect to customers and beneficial owners identified as PEPs, the DDA set out such a requirement for all contracting parties and beneficial owners. Therefore, while not labeled as "enhanced due diligence measures," the minimum CDD procedures applied to all contracting parties and beneficial owners are in fact "enhanced due diligence measures" and thus would clearly take into account the overall higher risks inherent to Liechtenstein's financial services.

402. Country risk is addressed by the FMA through Communication 1/2012, in which the FMA provides a list of countries that are subject to Directive 2005/60/EC or are considered to have AML/CFT measures in place that are equivalent to those under the Directive. Annex 2 of the DDO lists countries which Liechtenstein considers to have a high risk of ML/FT, or strategic deficiencies in their AML/CFT frameworks. The list includes 15 countries. The authorities stated that the list would be revised every time the FATF issues a public statement. The last revision took place in February 2013.

403. While private sector participants seemed to be aware of and rely on the country risk indicators, other risk indicators set out in Annex 2 of the DDO seem to be less frequently used. It was stated that this was mostly due to the fact that the risk indicators would target very specific situations and would only be marginally helpful in setting up the various risk categories for potential and existing clients, business relationships, and services. While the assessors appreciate that it would not be helpful to indicate all forms of private banking, or business relationships involving asset management vehicles as high risk given the features of Liechtenstein's financial market, it is exactly the higher risk nature of Liechtenstein's business that necessitates the formulation of highly practical and more broadly defined risk indicators. Any notable change in risk should result in a review of the categorisation of risk for a given customer, business relationship or service. The issuance of more

practice oriented risk indicators would also contribute to a better understanding amongst the industry as to what "risk" is and a more consistent approach to defining the various risk categories.

4.3. Customer Due Diligence, Including Enhanced or Reduced Measures (R.5–8)

Customer Due Diligence (R 5—rated PC in the 2007 MER)

4.3.1. Description and Analysis

Legal Framework:

- Due Diligence Act and
- Due Diligence Ordinance.

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress since the last MER

404. In 2007, Liechtenstein's PC rating for R.5 was based on a number of shortcomings with respect to the obligation to identify and verify the beneficial owner, as well as a lack of requirement to transmit originator information with domestic wire transfers and to apply enhanced CDD for high risk customers, and based on over reliance by domestic FIs/DNFBPs on foreign third party intermediaries to carry out CDD, while at the same time failing to consider such introduced business as high risk. The law also provided for certain exemptions to the application of CDD measures that are not allowed under the FATF standard.

405. Both the DDA and DDO have been revised since 2007, the last time in February 2013. The last round of revisions related mostly to penal and administrative sanctioning powers. Earlier revisions of the law were aimed to address the recommendations resulting from the 2007 assessment as well as to implement the requirements under the Third EU Directive on the Prevention of the Use of Financial Systems for the purpose of Money Laundering and Terrorist Financing, the Commission Directive of 2006 on the definition of "politically exposed person" and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis. The DDA and DDO provide for comprehensive identification and verification measures, record keeping obligations, suspicious transaction reporting and internal control obligations.

Relevant Characteristics of the Liechtenstein Financial System

406. The financial landscape in Liechtenstein is, to some extent, dominated by the banking sector. Although asset management companies, investment undertakings and life insurance businesses are also active, their total share of the assets under management in Liechtenstein accounts for less than the share held by the banking sector individually.

407. Through interviews conducted as part of the assessment, assessors learned that a significant part of the banking business in Liechtenstein is introduced to banks by trustees (hereafter "trustees") or trust and company service providers or persons with a certificate under Art. 180a PGR (hereafter

referred to as TCSPs) situated in Liechtenstein or other countries. The allowable provision of services by TCSPs will be discussed under the appropriate recommendation. In a typical scenario, the customer of an FI (or "contracting party," in the terminology of the DDA) is a natural or legal person, often introduced by a lawyer, trustee, or other TCSP. In the case of a legal person or arrangement (foundation, company, *ansltalt*, or trust, such structures often form part of a broader legal structure consisting of legal entities or arrangements set up in different parts of the world), this would be typically set up by a trustee or TCSP who would also act as the director or administrator of that legal structure. Hence, the trustee would generally represent the legal structure, acting as the trustee of the trust or the administrator of the foundation, as the case may be, and would open a bank account with a Liechtenstein bank in the name of the trust or the foundation, which is the "contracting party" represented by the trustee. So, for CDD purposes, the focus is generally on the trust or the foundation as represented by the trustee, while the customer of the trustee, who very often directs and controls the relationship and is very often a nonresident person, is in turn treated by the bank as the beneficial owner of the business relationship. The trustee of the trust or the foundation obtains the information regarding the beneficial owner.

408. This situation, especially when the customer of the trustee is a nonresident (or even more so when there is a broader international corporate structure involved), might have serious implications for the CDD procedures implemented by financial institutions. In these situations the FI very seldom gets to meet the beneficial owner and has to rely on the trustee at all times. The trustee does not appear to provide sufficient information to enable the bank to understand the beneficial owner and broader legal structure. For instance, the trustee would simply present a declaration of who is the beneficial owner (in line with Art. 6(1)(a) of the DDO), without providing information on how the foundation in Liechtenstein fits into a larger corporate structure. This may result in the FIs' limited insight into the customer in the common situation in which the beneficial owner is the driving force, which could prevent the FI from truly understanding the customer relationship, including potential risks. It follows, then, that if an FI is unable to effectively assess customer risk, it is also unable to effectively manage that risk. This problem is partially mitigated when the TCSP is a Liechtenstein entity subject to DDA; however, such mitigation would not apply to foreign TCSPs. Similarly, it would not apply in situations where TCSPs rely on business introduced by foreign TCSPs, who perform the CDD. Moreover, domestic TCSPs are not subject to a full prudential regulatory regime, and therefore not subject to a fit and proper test. In addition to grave implications for the effectiveness of implementation of R.5, this issue has a cascading effect throughout implementation of some other preventive measures.

Prohibition of Anonymous Accounts (c. 5.1):

409. Art. 13 of the DDA sets out a prohibition for persons subject to the law to keep passbooks, accounts, or custody accounts that are anonymous or issued in bearer form, or that are issued in a fictitious name. The authorities stated that 398 bearer passbook still existed as of 2011, with a total amount of approximately CHF 8 million of deposits. Authorities indicate that the average amount per passbook is CHF 20,424. This represents a decrease from 789 passbooks with CHF 19 million in 2007, and 2,098 passbooks with CHF 45 million in deposits in 2002.

410. When the bearer of such a passbook approaches an FI and requests an outflow of funds, and where the balance exceeds CHF 25,000, the FI is expected to identify and verify the identity of the

bearer and the beneficial owner before transferring the assets. The FIs interviewed stated that their policy is to perform due diligence when a passbook is presented, regardless of the balance. Further, with respect to these situations, representatives stated that they inquire with the bearer as to the history of the passbook. However, these instruments continue to present an inherent vulnerability due to the fact that the financial institution may have no insight into the history of physical transfer of the passbook, as the only interaction with the FI occurs when the passbook is presented by the prevailing bearer.

411. The law does not address or prohibit numbered accounts. The authorities indicated that in practice, numbered accounts still exist, but that such accounts have to be and are treated like any other account and are thus subject to all customer due diligence measures.

Implementation

412. The authorities stated that numbered accounts still exist; however, through discussions with industry representatives the assessors came to understand that such accounts are not "numbered accounts" in the traditional sense as these accounts are subject to CDD, including customer identification, but that the file is maintained under a number and access to the full CDD information is limited.

413. Interviews performed by the assessors confirmed that numbered accounts are not uncommon, but the authorities were unable to provide any estimate data points relating to the quantity or aggregate value of such accounts. According to interviews with FIs, the same due diligence procedures, including identification and verification of the identity of the customer and beneficial owner, apply to numbered accounts as they do to any other relationship. In the case of a numbered account, however, the complete due diligence file is only accessible to certain employees of the financial institution, including representatives of the compliance function. Additionally, as warranted, authorities and auditors have access to this information. In interviews with auditors, representatives stated that, in performing their duties as inspectors, they have access to the underlying due diligence information and documentation associated with numbered accounts.

When is CDD required (c. 5.2):

414. Art. 5 (2) of the DDA prescribes that CDD has to be carried out whenever a person subject to the law:

- Establishes a business relationship. The term "business relationship" is defined under Art. 2 to extend to any "business, professional or commercial relationship which is connected with the professional activities" of the person subject to the law and which is "expected, at the time when the contract is established, to have an element of duration;"

- Carries out an occasional transaction amounting to 15,000 Swiss francs (approximately US$16,000 or 12,000 euros) or more, whether the transaction is carried out in a single or several operations that appear to be linked. The term "occasional transaction" is defined in Art. 2 as any "cash transaction, especially money exchange, cash subscription of medium-

term notes and bonds, cash buying or selling of bearer securities, and cashing of checks, unless the transaction is carried out via an existing account or custody account;"

- Where there are doubts about the veracity or adequacy of preciously obtained data on the identity of the contracting party or the beneficial owner; and

- Where there is a suspicion of ML, a predicate offense, organised crime, or FT, regardless of any derogations, exemptions or threshold.

415. In addition, Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds (which is directly applicable in Liechtenstein, as explained earlier) requires FIs to undertake CDD measures when carrying out occasional transactions that are wire transfers. A more detailed discussion of the requirements under EC Regulation 1781/2006 is provided under SR.VII below.

416. The assessors noted that the obligation to carry out CDD on occasional transaction is limited to cash transactions and thus narrower than the definition under the FATF standard, which encompasses all types of occasional transaction. In practice, with respect to the characteristics of the Liechtenstein financial landscape, this limitation seems to be materially irrelevant as it is difficult to think of occasional transaction that can be carried out without using cash, in the situation defined under the DDA as "occasional transactions" could include transactions carried out with prepaid credit cards or purchases of or transactions carried out through use of a personal check or credit card, which would not be covered under Art. 5 (2) of the DDA.

Implementation

417. The FIs interviewed by assessors noted that their customer on-boarding process includes identification and verification of the identity of the customer and the beneficial owner, along with collection of documentation, at the time the relationship is established. The FIs interviewed generally described their customer base as being managed by relationship managers, who are responsible for certain clients and facilitate interaction between the customer and the FI. Generally, the FIs interviewed stated that they have in-person contact with the customer as part of establishing the relationship. However, it is important to reemphasise that the customer is often a professional representing a legal entity or legal arrangement, relied upon for the purpose of the CDD process. Some FIs noted that their customers are often referred from existing business partners and relationships, including relationships with lawyers and TCSP, and described such a referral policy as providing the financial institution with an added sense of comfort with respect to KYC of new customers. Some institutions noted that, in the case of nonresidents, their policy is to accept only customers who are referred from existing customers or from business relationships or trustees or lawyers. Industry representatives generally described the process for establishing a new relationship as taking a certain length of time and interaction.

418. In discussions, some of the industry representatives interviewed did not signal that they might have doubts about the veracity or quality of due diligence information after the process of establishing the relationship. This is not to say that the institutions interviewed did not express their policies towards maintaining up-to-date due diligence information, which they did express and is discussed

later in this report. However, the general attitude is that any doubts would be captured during the on-boarding process and would be cause for further investigation or rejection of the client. While a technical point, this attitude could create vulnerability. Institutions should have a broad view of what types of information might change and how, including the veracity and adequacy of previously obtained information, in order to inform whether due diligence for a certain customer must be performed again.

Identification measures and verification sources (c. 5.3):

419. Art. 6 of the DDA requires persons subject to the law to identify the contracting party and verify the contracting party's identity by means of documents with probative value. Such identification and verification measures must be repeated in case of doubts about the identity of the contracting party.

420. Arts. 6–10 of the DDO further elaborate on the requirements under the DDA by stating the types of information that shall be obtained for natural and legal person, and by listing the types of documents that are considered to have "probative value." Art. 6 specifically states that identification and verification measures must be applied both in relation to permanent and occasional customers. The authorities stated that the term "contracting party" would not be defined, but is considered to be the natural or legal person with whom the person subject to the law establishes the business relationship.

421. For contracting parties that are natural persons, Arts. 6 and 7 of the DDO require that the full name, date of birth, address of residence, and nationality must be obtained and verified. Verification must be based on a valid official identification document with a photograph, such as a passport, driver's license, or identity card. The document must entitle the contracting party to enter the Principality of Liechtenstein at the time when the identification and verification measures are carried out otherwise it cannot be considered as a "valid" document.

422. For contracting parties that are legal persons, Arts. 6 and 8 of the DDO require that the name or company name, legal form, address of domicile, date of formation, date and place of incorporation, and the names of the bodies or trustees formally acting on behalf of the legal entity must be obtained and verified.

423. For legal entities subject to public registration in the public register of any country, verification measures must be based on an extract from the public register issued by the public register authority, a written extract from a database maintained by the public register authority, or a written extract from a trustworthy privately maintained directory or equivalent database. The authorities indicated that the reference to "trustworthy privately maintained directory or equivalent database" was not further defined anywhere, but that the reference was intended to cover mostly a Swiss privately maintained directory that some FIs rely on. Liechtenstein law does not require any of the verification methods with respect to legal entities that are suggested in the General Guide to Account Opening and Customer Identification. Reliance purely on the excerpts of public registers may be sufficient in some cases. However, for a large number of countries the company register would not provide comprehensive, reliable, and updated information.

424. In case of a legal entity not entered in a public register, verification shall take place based on an official certificate issued in Liechtenstein; the statutes, formation documents or formation agreement; a certification by an appointed auditor to the annual accounts; an official license to conduct its activities; or a written extract from a trustworthy privately maintained directory of equivalent database.

425. All documents used for verification of the identity of the contracting party must be provided either as originals or in form of a certified copy. Pursuant to Art. 9 of the DDA, copies of documents may be certified by a person subject to the law or its affiliates or branches; a foreign FI, lawyer, trustee, auditor, or asset manager that is subject to the EU Directive or an equivalent regulation and is supervised; or a notary public. Persons subject to the law are obliged to make a copy of the document that has been used to verify the identity of the contracting party, confirm on the copy that they have inspected the original or certified copy, sign and the date the copy and include it with the contracting party's due diligence file. All documents used for verifying the contracting party's identity must reflect current circumstances and certificates of authenticity, register extracts and confirmations by appointed auditors used for verification purposes cannot be older than 12 months.

Implementation

426. In practice, regarding customers that are natural persons, the FIs interviewed stated that they obtain the information required by the relevant laws (name, date of birth, address, domicile, and nationality) and verify this information based on an identification document with a photograph, including an identification card or a passport, and in some cases a utility bill. FIs noted that their review processes include an obligation to make sure any expired passport copies are replaced with updated versions.

427. Many of the FIs interviewed described their processes as heavily reliant on the relationship manager and their contact with the customer. Again, it is important to reemphasise that the customer is often representing a legal entity or legal arrangement. Some FIs noted that their customers are often referred from existing business partners and relationships, including relationships with lawyers and TCSP, and described such a referral policy as providing the FI with an added sense of comfort with respect to new customers.

428. In discussing this arrangement, which is a common feature to private banking, some industry representatives stated that the compliance function within the FI is regularly involved in determining what information must be obtained from a customer and in approving the adequacy of information collected. Some of the FIs interviewed stated that representatives of the FI, including relationship managers, generally have in-person contact with a customer at least once a year, with non-face-to-face contact occurring more often. However, as discussed, this contact is usually the person acting on behalf of or representing the customer, which is often a TCSP (resident and nonresident alike), considering that most customers are legal entities. Generally, assessors understand from interviews that additional due diligence, including the collection of additional due diligence information or documentation throughout the customer relationship, relies on the role of the relationship manager. Some institutions noted that, if in the course of a transaction investigation they discover they require new or updated due diligence information for a customer, they would approach the customer to obtain the necessary information.

429. Regarding customers that are legal persons, including companies, trusts, foundations, and other legal entities, the FIs interviewed stated that they obtain the identification information required by the relevant laws (name, legal form, address, domicile, date and place of formation, and names of bodies or trustees acting on its behalf). Institutions described verification processes that rely on varying pieces and types of documentation. Generally, institutions commonly described their process for verifying this information as including the collection of an extract from the public register, in the case of a Liechtenstein entity, or various other organic documents in the case of a foreign entity, including an extract from the foreign public registry or the articles of incorporation. However, which documents and how many forms are used for verification purposes varied across institutions interviewed.

Identification of Legal Persons or Other Arrangements (c. 5.4):

Criterion 5.4. (a)

430. Art. 6 (2) of the DDO provides that where a contracting party is a legal entity, the person subject to the law must ensure that any person purporting to act on behalf of the legal person is authorised to do so, and verify the identity of any such person based on documents with probative value, or by confirming the authenticity of the signature through the same process that is applied under Art. 9 of the DDO for the certification of document copies. The term "legal entity" is defined under Art. 2 of the DDA to encompass any "legal person, company, trust or other collective or asset entity, irrespective of its legal form" and thus also includes legal arrangements.

Criterion 5.4. (b)

431. The legal status of contracting parties that are legal persons (which includes legal arrangements) is verified in the way described under criterion 5.3 above. In situations in which a natural person customer acts in his function as a trustee of a legal arrangement, no specific provisions require the obtaining of the trust deed, letter of wishes, and other provisions regulating the power to make binding decisions on behalf of the trust assets or trust beneficiaries. However, the authorities stated that in such cases the person subject to the law would have to obtain such information and documents as part of the obligation to identify the beneficial owner.

Implementation

432. In establishing relationships with legal persons and arrangements, assessors were told by financial institutions that they generally satisfy themselves of the good standing of the entity, and determine that a person is authorised to act on behalf of a customer, by obtaining an excerpt from the public registry. However, the means of doing this, and the documentation used, varied across the industry according to interviews with the assessors. While there was no consistency across the industry, regarding documents obtained in the case of foreign entities, institutions generally described obtaining one or more of the following: excerpts from the local registry, board resolutions assigning signatory rights, articles of incorporation, and other organic documents and documents that assign authority to a representative. Some industry representatives stated that they might obtain additional documentation to better understand the organs of a legal entity or arrangement, including in certain

cases of higher risk. As described, these documents might include the organic documents or power of attorney and would be provided by the contracting party.

Identification of Beneficial Owners (c. 5.5, 5.5.1, and 5.5.2):

433. Art. 7 of the DDA requires persons subject to the law to identify the beneficial owner, and, based on risk, take adequate measures to verify the identity of the beneficial owner. In case of a legal entity, this includes taking adequate measures to determine the ownership and control structure of the contracting party. Identification and verification measures must be repeated whenever there are doubts about concerning the identity of the beneficial owner. The authorities indicated that the reference to "risk-based measures" would mean that the measures should be reasonable and in proportion to the risks involved. It would not be allowed to waive verification measures based on low risk—the minimum requirement to obtain a signature of the contracting party as to who the beneficial owner would apply in all cases. In case of higher risk, however, additional verification measures would be required.

434. Art. 2 of the DDA defines the term "beneficial owner" in line with the definition in the FATF standard to cover "a natural person on whose initiative or in whose interest a transaction or activity is ultimately carried out or a business relationship is ultimately constituted. In the case of legal entities the beneficial owner is also the natural person who ultimately owns or controls the legal entity." The term "legal person" is defined under Art. 2 to include legal arrangements.

435. Art. 3 of the DDO further specifies the definition under Art. 2 DDA. For corporations and companies without legal personality, the term "beneficial owner" covers any natural person who directly or indirectly hold or control shares or voting rights of 25 percent or more of a corporation or company, who receive 25 percent or more of the profits of such corporations or companies, or who otherwise exercises control over the management of such legal entities.

436. "Control" as used under Art. 3 includes the ability to dispose of the assets of the legal entity; to amend the provisions governing the nature of the legal entity; to amend the beneficiaries; or to influence the exercise of any of the named control powers.

437. For foundations, trusts, and establishments, the term shall include named beneficiaries of 25 percent of the assets or more, or in case where no individual persons have been named beneficiaries, those natural persons in whose interest the legal entity was mainly established, and any natural person who ultimately exercises direct or indirect control over the assets of the legal entity.

438. The definition of "beneficial owner" as set out in the DDA and DDO does not include the settlor unless the settlor is granted express power to influence the exercise of control. While strictly speaking the FATF standard's definition does not require countries to cover such persons under the definition, from a practical perspective, a settlor might not be given any such explicit powers but could be in a position to exercise influence in practice. It would thus be good practice to extend the CDD requirements to include the settlor explicitly. This approach is also reflected in the FATF Methodology, which provides that the identification of the settlor of a trust is amongst the measures to be taken to satisfactorily identify the beneficial owner.

439. Art. 11 of the DDO further specifies the obligations under Art. 7 of the DDA, and obliges persons subject to the law to collect and document the required beneficial ownership information and have the accuracy thereof confirmed through signature by the contracting party or a person so authorised by the contracting party. In the absence of any specific risk factors or doubts about the accuracy of the obtained information, no other means of verification are required. Exceptions to the signature requirements exist for collective accounts, deposits or policies. For legal entities that have no beneficial owner, the person subject to the law shall obtain a statement from the contracting party confirming this situation, and providing information on the effective depositor, the persons who are authorised to issue instructions to the contracting party or its bodies, and the persons eligible as beneficiaries. The same provision applies to NPOs.

Criterion 5.5.1.

440. There is no express requirement under the DDA or DDO for persons subject to the law to determine whether a customer is acting on behalf of another person. The authorities indicated that such a requirement would be implied by the obligation to obtain the name, date of birth, address of residence, and nationality of the beneficial owner from the contracting party, and to have the contracting party verify this information with his signature. Given that the FATF standard requires this requirement to be explicitly addressed in primary or secondary legislation, the assessors would advise that the law address this point more explicitly.

441. The FIs interviewed did not note instances in which a natural person established an account in their own name and was acting for a third party that was not disclosed to the institution at the time the relationship was to be established, nor did representatives describe such a situation having arisen after establishment of the relationship. Some FIs interviewed noted that participation in account activities by anyone other than identified and authorised persons would give rise to suspicion and instigate review (for example, payment of an insurance premium by a person other than the policy holder).

Criterion 5.5.2

442. As indicated under criterion 5.5 above in cases where a contracting party is a legal person or legal arrangement, the person subject to the law must take risk based and adequate measures to determine the ownership and control structure of the legal entity or legal arrangement.

443. In this respect, the FIs interviewed by assessors described their procedures as generally satisfied by the document demonstrating the authority of the representative, often the excerpt from the public registry or similar documents assigning rights in the case of a foreign customer. It must be noted that, generally, the document denoting the authority of the representative does not identify the beneficial owner, nor does it provide insight into any legal structures between the representative and the beneficial owner. As discussed in the next section, additional documentation would be necessary to understand the broader structure of the customer, and to confirm the relationship between the customer, the beneficial owner, and any layers of legal persons or arrangements in between the two.

444. As indicated under criterion 5.5 above a person subject to the law must in all cases identify the beneficial owner.

445. The FIs interviewed by assessors gave varying descriptions of the means of identifying and verifying the identity of the beneficial owner. Some FIs stated that they were generally satisfied with the declaration of beneficial ownership information signed by the customer, while some noted that they would also obtain a copy of the beneficial owner's valid passport. Regarding additional documentation, some of the FIs interviewed stated that they may collect certain documents in order to better understand the ownership and control structure of their customers, but only in very specific and infrequent cases. As described, these documents might include the articles of formation, the deed, the by-laws, or other relevant documents that describe the organisation of the legal person or arrangement, some of which might identify the beneficial owners and other relevant parties. Few FIs interviewed stated that their policy is to obtain such additional documentation on a more regular basis, not only in cases of higher risk. Generally, these documents would also be obtained from the contracting party.

446. It should be noted that the TCSPs interviewed by assessors generally described their relationships with FIs as being governed by a sense of "trust" and general reliance. The TCSPs interviewed stated that financial institutions are generally satisfied with their signed declaration of the beneficial owner when establishing a relationship with an FI on behalf of a legal person or arrangement. Some TCSPs went on to state that they have never been asked for such documents and that if they were to be asked for additional documents, such as the deed or by-laws, they would refuse to provide them. Some argued that banks would be reluctant to see such documents, in case, at a future date, they would be found liable as a constructive trustee for failing to notice that a professional trustee was acting outside the scope of the powers in the constitutional documents. Alternatively, some TCSPs stated that they would consider the provision of additional documents to the financial institution.

447. In sum, through interviews with the assessors, it became apparent that the provision, certification, and verification of beneficial ownership information are generally entirely reliant on information provided by a party representing the customer (i.e. the foreign or domestic TCSP), which would also technically be considered part of the legal structure of the customer. Although some institutions noted that, in some circumstances, the financial institution will meet the beneficial owner of the customer and the person representing the customer when establishing the relationship. However, much of the information provided through the interviews performed by assessors lead to the understanding that, in many circumstances, the only evidence connecting a beneficial owner to a customer that is a legal person or arrangement would be the self-certified declaration provided by the intermediary in his capacity as the legal representative of the customer.

Information on Purpose and Nature of Business Relationship (c. 5.6):

448. Art. 8 of the DDA provides that persons subject to the law are required to establish a profile for each business relationship that includes information on the origin of the assets and the purpose and intended nature of the business relationship.

449. The FIs interviewed described their internal process for developing a customer profile and a risk assessment for each customer, in accordance with the relevant obligation.

Implementation:

450. As part of the procedure to develop the customer profile, and the general customer on boarding process, FIs purported to obtain information on the origin of funds, the reason for establishing the relationship, and the purpose and intended nature of the relationship. With respect to customers that are legal entities and arrangements, this information would be provided by the representative of the customer. As with other aspects of due diligence, descriptions of verifying this information varied, but the FIs interviewed described this process as generally reliant on the information provided by the customer. Some institutions noted that their policy is to perform internet searches to confirm the information provided, and to request additional documentation from the customer in cases where they are unable to confirm the information provided. Additionally, some institutions stated that they might request underlying documentation in support of the information provided in cases of higher-risk. Such information might include description of the business activities of legal entities or an employment background of an individual.

451. The FIs interviewed asserted that the information provided by the representative of the customer is used to undertake a risk assessment of the customer. As described, the criteria for such a risk assessment include jurisdiction of domicile and nationality, as well as the complexity of customers that are legal entities or arrangements. Generally, industry representatives described jurisdictional risk to include factors as a country's corruption index rating and countries on the FATF noncompliant list published by the FMA. Regarding complex structures, some FIs interviewed stated that their policy defines complex structures as those involving more than two jurisdictions or consisting of more than one layer.

452. The assessment of risk presented by a customer relationship is essential to an FI's ability to manage that risk and to protect itself, the domestic financial system, and the international financial system from abuse. In the case of Liechtenstein, and the pervasive use of intermediated relationships combined with a reliance on intermediaries for information, a serious vulnerability emerges. As described, financial institutions are generally undertaking risk assessments based on unsubstantiated information provided by the person representing the customer. The information provided can be very limited and still satisfy the data points required by law. These situations do not provide the FI with the verifiable information necessary to effectively assess risk, including insight into the relationship between the beneficial owner and the customer, including layers of legal entities. Guidance issued by the FMA highlights "complex structures" as an indicator of risk, but FIs are unable to determine whether a structure might be complex without having a broad view of the various organs and layers of legal entities and arrangements. FIs should have a clear understanding of all customers, including legal entities and arrangements, and how the customer fits into a broader structure, which might have multiple organs around the world.

Ongoing Due Diligence on Business Relationship (c. 5.7, 5.7.1, and 5.7.2):

453. Art. 8 of the DDA and Arts. 20 and 28 of the DDO require persons subject to the law to keep an updated profile for each business relationship, stating information on the contracting party and beneficial owner, the authorised agents and bodies authorised to act for the contracting party, economic background and origin of the assets deposited, and the profession and business activity of

the effective depositor of the assets and intended use of the assets. The level of detailed provided shall be in accordance with the risk posed by a specific business relationship.

454. The FIs interviewed by the assessors described their processes for transaction monitoring and for maintaining updated profiles for each customer relationship.

Criterion 5.7.1

455. Art. 9 of the DDA and Art. 21 of the DDO further require that business relationships and transactions are monitored based on the risks involved, including to monitor transactions performed in the course of the business relationship, to ensure that they correspond to the established business profile, which also contains information on the source of assets deposited. Pursuant to Art. 21 of the DDO, monitoring of business relationships shall be carried out using state-of-the art computerised systems as far as possible.

Implementation

456. The FIs interviewed described having a process for monitoring and scrutinising transactions. In general, representatives described their monitoring procedures as employing a combination of automated and human review. Representatives stated that information is collected on the customer to create a risk rating, which corresponds to certain transaction parameters and thresholds. Transactions outside of the prescribed parameters would create an event requiring further investigation. As described, the depth and type of investigation would depend on a number of criteria, including the risk profile of the customer, the value of the transaction, the deviation from the threshold, and other factors.

457. Through interviews, assessors learned that internal procedures for transaction investigation vary widely across the industry in Liechtenstein. Some FIs noted that transactions outside the parameters, but not of a large value and for a customer deemed lower risk, would be processed and an event that would be investigated at a later date. Some FIs also stated that any transaction over a certain threshold would be automatically frozen until a justification is provided, possibly accompanied by additional documentation, and management approval is provided. Some of the FIs interviewed described this procedure as including approval of the compliance department, in addition to the relationship manager and a member of the executive level of the institution.

458. Many of the arrangements described by FIs involve the relationship manager personally accepting transaction instructions from the customer. With respect to these cases, some institutions noted that it is the responsibility of the relationship manager to compare the transaction request against the customer profile. Such transactions would then also be monitored as part of the institution's automatic monitoring program.

Criterion 5.7.2

459. There is a general requirement under Art. 8 (2) of the DDA to keep the business profile updated, but no specific reference to an obligation to carry out reviews of existing records, in particular for higher risk categories of customers or business relationships. While such a requirement

is set out under the FMA Guideline 2013/1 on risk based approach, the Guideline is not enforceable and thus cannot be considered for purpose of rating Liechtenstein's compliance with the FATF standard on this point.

Implementation

460. The FIs interviewed by the assessors generally grasped the concept of maintaining up-to-date due diligence for their customers; however, practice varied across institutions, and there appears to be a vulnerability associated with "existing" or "legacy" customers, where the implementation of CDD measures appears uneven because of purported difficulties in updating CDD files concerning past customers, which will be discussed under criterion 5.17.

461. In general, FIs purported to obtain updated due diligence information on an ad hoc basis, often in instances in which a relationship manager is made aware of changes in components of the customer profile. In these situations, the relationship manager would be responsible for obtaining updated information from the customer.

462. With respect to customers that are legal entities or arrangements, the FIs confirmed that they rely on notification from the customer regarding changes to any underlying information and for provision of updated information and any required documentation.

463. Generally, deficiencies in fully understanding a customer relationship, particularly with respect to customers that are legal entities or arrangements, have negative implications for an FI's ability to carry out ongoing CDD and to identify when information and customer profiles should be updated.

464. Additionally, the institutions described instances in which suspicions arise regarding the customer (e.g. in situations in which a transaction is inconsistent with a customer profile or negative news is noticed by a member of the institution), that would trigger an investigation by the institution and potentially lead to the collection of updated information from the customer, if the institution determines that information is outdated. Some of the institutions interviewed described their procedures as including periodically running the names of parties to a relationship (e.g. customer, beneficial owner, etc.) through commercial databases, which could give rise to negative news or other relevant information. However, generally, the FIs interviewed did not have set schedule for periodically reviewing customer due diligence information and documentation.

465. Some of the institutions interviewed described their policy to require relationship managers to have personal contact with each customer at least once per year. However, some institutions merely "favored" such periodic personal interaction, and others did not describe such a policy.

466. Generally, it is the opinion of the assessors that scheduled periodic profile reviews would augment such an ad hoc framework, which, when instituted on its own, could create a gap in ensuring that profiles are maintained up-to-date.

467. Certain FIs interviewed noted an issue with respect to obtaining due diligence information for longstanding, or legacy, customers. Institutions noted that as much as five percent of their customers

fall into the category of legacy customers with outdated due diligence information. Assessors consider this issue of particular concern that should be addressed.

Risk—Enhanced Due Diligence for Higher-Risk Customers (c. 5.8):

468. Art. 11 of the DDA requires persons subject to the law to establish high risk criteria, to categorise business relationships and transactions according to these criteria, and to apply more intensive monitoring and other measures to those designated as high risk. Art. 23 of the DDA specifies that "other measures" under Art. 11 of the DDA shall include further verification of the identifies of contracting parties and beneficial owners and clarification of the origin of assets deposited, intended use of assets withdrawn, or professional and business activity of the contracting party and beneficial owner. Business relationships that were established non-face-to-face, business relationships and transactions involving PEPs, those involving cross-border correspondent banking relationships and business relationships and transactions with contracting parties or beneficial owners in high risk countries, or involving complex structures, complex and unusual transactions or transactions without any apparent or visible lawful purpose are mandatorily to be classified as high risk. In all other cases, including for those involving nonresident customers and private banking relationships, it is within the FI/DNFBPs discretion to determine the risks associated with a specific business relationship or transaction. Specific enhanced due diligence requirements are set out under Art. 11 of the DDA for each of these three categories of business relationships and transactions, as described under Recommendations 6, 7, and 8.

469. Art. 23 of the DDO further elaborates on the requirements under the DDA by setting out a list of criteria based on which a business relationship or transaction shall be classified as high risk, including in relation to the geographic location or nationality of contracting parties or beneficial owners, the types of products and services requested, and the amount of assets deposited or transferred, and the country of origin or destination of payments. In addition, a comprehensive list of red flag indicators based on which potential ML or FT risks may be identified is set out in the annex to the DDO. As indicated in the overview section, while private sector participants seemed to be aware of and rely on the country risk indicators, the risk indicators set out in Annex II of the DDO seem to be less frequently as they cover only very specific situations and thus are not helpful in setting up the various risk categories for potential and existing clients, business relationships and services. Based on the higher risk nature of Liechtenstein's private banking, and asset management business involving legal entities and structures, the formulation of highly practical and more broadly defined risk indicators would be crucial to ensure that the slightest indication of risk results in a review of the categorisation for a given customer, business relationship or service, to contribute to a better understanding amongst the industry as to what "risk" is and to come to a more consistent approach by FIs for defining the various risk categories.

Implementation:

470. The FIs interviewed by the assessors stated that they have policies in place to assess the risk of a customer, and to apply enhanced measures to those customers determined to be higher risk. However, only some of the FIs interviewed described a policy to undertake an internal institution risk assessment, which would assist in identifying the risk exposure of the FI and aid in tailoring the categorisation of customer risk. Industry representatives generally noted that a combination of factors

would determine whether a customer is considered higher risk, including implication of higher risk jurisdictions, complexity of the structure of the customer, asset turnover, and business type in the case of legal entities. The FIs interviewed generally described their higher risk customers as implicating high risk jurisdictions, operating in industries considered higher risk (e.g. natural resources), or having a complex structure (e.g. multiple layers and jurisdictions).

471. Regarding identification and verification, the described enhanced due diligence procedures vary across institutions and situations. FIs noted that they would request additional documentation in certain instances of higher risk, but such information might vary according to the situation (e.g. type of customer, type of business, jurisdiction, etc.). Regarding monitoring, the described enhanced due diligence procedures include heightened scrutiny of transactions according to narrower parameters and can involve management approval in certain circumstances. At certain institutions, enhanced due diligence would also include more frequent reviews of a customer profile.

472. Regarding transactions requested by high risk customers, some institutions described their procedures as requiring approval from management, and possibly the compliance department, in every instance, whereas other institutions allowed transactions under a lower threshold.

473. The FIs interviewed stated that PEP customers are treated as high risk and are subject to enhanced due diligence procedures. The FIs interviewed generally did not establish relationships without contact with the customer. The FIs interviewed by assessors stated that they do not offer cross-border FIs outside Liechtenstein.

Risk—Application of Simplified/Reduced CDD Measures When Appropriate (c. 5.9):

474. Art. 10 of the DDA prescribes cases in which persons subject to the law are exempted from having to apply identification and verification measures to the contracting party, the beneficial owners, to establish a business profile or to monitor transactions and business relationships under Art. 5 (1) (a)–(c) of the DDA when:

- The contracting party is a stock-listed company whose shares are publicly traded and is not acting in the interest of a third party;
- The contracting party is a domestic authority;
- The contracting party is itself subject to CDD obligations under the third EU Directive or an equivalent regulation, is supervised and is not acting in the interest of a third party;
- In the case of a life insurance premium which has an annual premium of CHF 1,000 or less, or a single premium of CHF 2,500 or less;
- In the case of a life insurance policy for a pension scheme that does not have a surrender clause and cannot be used as a collateral;
- In the case of insurances for old age provision benefits where the contributions are deducted by the employer and the beneficiary rights are not transferable;

- A rental deposit account for rental property located in an EEA member state or Switzerland is established and the deposit is CHF 15,000 or less;

- E-money is spent or managed through use of a device that is not rechargeable and the amount stored is CHF 150 or less; or that is rechargeable, and the total limit on annual spending is CHF 2,500 or less;

- Where the contractual relationship is an exclusive asset management mandated with a limited power of attorney for an individual bank account or custody account that is kept with a bank that is subject to the third EU Directive or equivalent regulation and is supervised; or

- Transactions constitute external statutory or other auditing for a legal entity that is already monitored by a person subject to the law.

475. In addition, certain types of persons subject to the law, notably banks, insurance companies, exchange offices, insurance brokers, e-money institutions and other PSPs are exempted from having to identify and verify the identity of the beneficial owner in cases where the contracting party is a notary, lawyer, or legal agent of an EEA Member State or Switzerland who keeps an account or custody account for his client within the scope of a forensic activity or as an executor, escrow agent, or similar capacity.

476. Identification and verification measures for the contracting party also do not apply in cases where the contracting party has already previously been identified by the same undertaking group or conglomerate the person subject to the law belongs to. Copies of the documents based on which the original identification took place, however, must be enclosed in the customer file maintained in Liechtenstein. This poses a particular problem given that many Liechtenstein banks have sister companies in other offshore jurisdictions, not all of which are tightly regulated for purposes of AML/CFT. In such cases, a Liechtenstein bank may, for example, rely solely on his Panamanian affiliated bank or TCSP to apply identification or verification measures in relation to the customer.

477. While the assessors take note of Liechtenstein's obligation as an EEA member state to implement the EU money laundering directives, it seems that some important safeguards set out in the EU Directive provisions pertaining to simplified have not been transposed in the DDA. It should also be noted that this assessment report is based on the FATF 40+9 Recommendations. The FATF standard, while making provision for the application of reduced or simplified CDD in some limited circumstances, does not permit blanket exemptions from the vast majority of the key elements of the CDD process as set out under Art. 10 of the DDA.

478. From a practical perspective, the removal of the obligation for institutions to undertake ongoing monitoring of the accounts to ensure that the transactions are consistent with the institution's knowledge of the customer is likely to affect the requirement to identify unusual or suspicious transactions. Another area of particular concern is the fact that the exemption applies even in cases where there are doubts about the veracity or adequacy of the information identifying the customer or beneficial owner.

479. As indicated in the overview section, while the assessors appreciate the authorities view that based on Liechtenstein's size it would be more efficient to adopt the findings of an EU wide risk assessment or Switzerland rather than to carry out an isolated risk assessment for Liechtenstein, and the application of simplified CDD in particular, it would still be important that Liechtenstein reviews and if necessary custom tailors any potential simplified requirements under its AML/CFT framework in light of the specific features of Liechtenstein's financial service industry, rather than simply adopt the findings of other national or supranational risk assessments.

Implementation

480. The FIs interviewed by assessors stated that they do avail themselves of the simplified due diligence measures provided for in the DDA/DDO. Whereas the simplified measures as outlined in the DDA constitute an exemption from due diligence, which is not in line with the FATF standard, the FIs interviewed by the assessors stated that their simplified due diligence measures include identifying and verifying the identity of the contracting party, but not the beneficial owner. Further, representatives stated that they perform ongoing monitoring of accounts subject to such measures, in accordance with obligations. When asked for examples, industry representatives noted that they employ such due diligence measures for customers that are regulated insurance companies and publicly listed companies. It should be noted that some FIs purported to employ a basic standard of due diligence on all customers, without subjecting any customers to simplified measures.

4.3.2. Asset Management Firms and Their Application of Simplified Due Diligence

481. Some of the asset management firms interviewed by assessors described their business activities as entirely qualifying to be subject to the simplified due diligence measures outlined in the DDA/DDO. These firms described their procedures for identifying the customer and obtaining the information necessary to create a customer profile, but do not include a policy for identifying or verifying the identity of the beneficial owner. In line with the DDA/DDO, these firms described their procedures as including ongoing monitoring of customer transactions. As described, these policies for transaction monitoring include criteria for suspicions, which, if triggered, would require investigation, and possibly justification and collection of supporting documentation by the relationship manager.

482. The firms interviewed were generally aware of the prohibition of applying simplified due diligence procedures in the case of higher risk clients. However, representatives generally stated that they would usually not know if the risk profile of the customer increased to high risk, and thus disqualifying the application of simplified measures, which are not permitted in higher risk situations. To this end, representatives generally described their procedures for establishing relationships to include a risk assessment of the client, based on information provided by the contracting party, which includes identification of PEPs. These firms stated that, in cases of higher risk, their policy prohibits the establishment of such a relationship and continued administration of simplified due diligence on their client base. As an ongoing matter, continued application of simplified measures requires that the customer relationships remain lower risk. Descriptions of policies for ensuring that relationships do not become higher risk varied across the firms interviewed. Some firms stated that they would completely rely on the customer, who may not be the beneficial owner, while some firms described a preference that a representative of the firm have annual contact with the customer and inquire as to

whether any underlying information has changed. It must be noted that there is no legal requirement that FIs or intermediaries notify one another of changes in underlying customer information.

483. The asset management firms interviewed that described themselves as engaging in limited business activities subject to full due diligence under the DDA/DDO, also described having procedures in place to comply with the DDA/DDO. These institutions described their policies to include measures for identifying and verifying the identity of the customer and the beneficial owner, maintaining a customer profile commensurate with the criteria set forth in the DDA/DDO, and monitoring the relationship and transactions for concerning activity. As described, these policies for transaction monitoring include criteria for suspicions, which, if triggered, would require investigation, and possibly justification and collection of supporting documentation by the relationship manager. However, since they would not usually know whether the risk profile increased to high risk, there is a risk of disqualifying the requirement prohibiting simplified due diligence in higher risk situations.

Risk—Simplification/Reduction of CDD Measures Relating to Overseas Residents (c. 5.10):

484. The so-called "simplified" CDD can be applied to nonresident customers only in cases where AML/CFT measures in line with or equivalent to those set out under the third EU Directive are applied and that are not acting on behalf of a third party. However, the exemption is defined more broadly for situations where customer identification and verification has already been carried out by another member of the financial group. In such cases, the CDD on the customer by the foreign institution needs to be carried out "in an equivalent manner." Based on the language of the provision, it seems to be within the FI's discretion to make that determination, without having to resort to any official indication or guidance that the country under whose laws the foreign institution is operating has effectively implemented the FATF standard.

Implementation

485. The FIs interviewed did not describe their simplified due diligence measures as applying to customers situated in countries not compliant with the FATF standards. Furthermore, while FIs generally did not describe their simplified due diligence measures as applying to overseas customers, this might not be the case with asset managers, described earlier, that do not identify the beneficial owner of a customer. However, some FIs noted that they do employ the exemption from having to identify and verify the identity of the beneficial owner in cases where the contracting party is a notary, lawyer, or legal agent of an EEA member state or Switzerland who keeps an account or custody account for his client within the scope of a forensic activity or as an executor, escrow agent or similar capacity.

Risk—Simplified/Reduced CDD Measures Not to Apply When Suspicions of ML/TF or Other High Risk Scenarios Exist (c. 5.11):

486. Art. 10 of the DDA prescribes cases in which persons subject to the law may apply simplified CDD measures. The provision clarifies that in cases of occasional transactions under Art. 5 (2)(d), or whenever there enhanced CDD measures under Art. 11 apply, however, simplified measures may never be applied. The exception under Art. 10 for the application of simplified CDD does not apply where there is a suspicion of ML or FT or if there is a high risk scenario under Art. 11.

487. The FIs interviewed stated that they do not apply simplified due diligence in cases of suspicion of ML or FT, or other high risk scenarios. According to statements provided by representatives, the FIs monitor all transactions, in accordance with due diligence obligations, and noted that reviews resulting from transaction monitoring, or other sources, could trigger investigation and re-assessment of customer risk. However, these ongoing monitoring is often only based on software and FIs did not note instances in which transaction monitoring led to a reassessment of risk.

Risk-Based Application of CDD to be Consistent with Guidelines (c. 5.12):

488. The FMA has issued guidelines in relation to a risk-based approach to conducting CDD, which instructs FIs on how to establish risk categories, and how to carry out risk-based monitoring and ongoing due diligence.

489. Generally, FIs described their due diligence policies to include procedures sensitive to risk. In practice, as described, institutions apply exhaustive due diligence to all customers and apply enhanced measures in cases of higher risk, as determined by the FIs customer risk assessment.

490. Description of the implementation of due diligence as provided to the assessors by FIs generally appears to be in line with guidance on the risk-based approach issued by the FMA in 2013. However, as noted earlier, only some institutions described their internal policy for undertaking an institution risk assessment of all business relationships and transactions, as suggested in the guidance. The guidance intends to provide industry with a better understanding of proper application of the risk-based approach, reiterating that FIs are obligated to undertake risk assessments of their customers. The guidance echoes the law in stating that enhanced due diligence measures should be taken in cases of higher risk, simplified measures in cases of lower risk, and normal measures in all other scenarios. Furthermore, the guidance reiterates that simplified measures cannot be applied in high risk scenarios. Additionally, the guidance states that the FATF list, any applicable advisories published by the FMA, and UN and EU sanctions must be taken into consideration when an FI assesses country risk. Furthermore, the FMA Guideline refers to higher risk arising in countries which, according to credible sources, have a considerable amount of corruption or provide resources to support terrorist acts or let terrorist organisations operate in their territory.

Timing of Verification of Identity—General Rule (c. 5.13):

491. Art. 5 of the DDA and Art. 18 of the DDO provide that all identification and verification information for the contracting party and beneficial owner have to be obtained at the time the business relationship is initiated, or the occasional transaction is carried out. In cases where due diligence requirements cannot be met, the person subject to the law may not establish the business relationship or carry out the transaction and is required to determine whether the filing of an STR is necessary. In case where the identification or verification measures are applied due to a suspicion of ML or FT, or because of doubts about the veracity of previously obtained CDD information, the person subject to the law must terminate the existing relationship and document the outflow of assets, and, if necessary, file an STR.

492. The FIs interviewed stated that their policies generally require identification and verification of the customer and the beneficial owner at the time the relationship is initiated. However, as noted

elsewhere, deficiencies related to obtaining a full understanding of the structure of customers that are legal entities or arrangements in order to verify the parties to the relationship would have the same negative implications for this criterion.

Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1):

Criterion 15.14

493. As a general exception to the rule described under criterion 5.13, Art. 18 (2) of the DDO allows for CDD information and documentation to be made available after the establishment of a business relationship if this is necessary to maintain normal business. However, in such cases, the person subject to the law must ensure that no outflows of funds take place until identification/verification has been completed.

494. Art. 18 (2) is more permissive than the FATF standard, which allows for verification to be delayed under specific circumstances. In comparison, Art. 18 (2) of the DDO allows for any information and documents, including identification information, to be obtained after a business relationship has been established. At the same time, Art. 18 (2) is more restrictive than the FATF standard in that it does not leave it at the discretion of persons subject to the law to determine whether or not a business relationship may be used prior to verification, but prohibits in all cases the outflow from such accounts. The measure ensures that the risks associated with the "integration" but not the "placing" phase of ML is addressed. To fully comply with the FATF standard, the DDA and DDO thus should limit the possibility to delay certain CDD measures to situations where it can be assured that the delayed measures are carried out as soon as reasonably practicable, and all aspects of the ML risks are effectively managed.

495. The FIs interviewed stated that their policies allow for the establishment of a relationship only after all due diligence information is obtained, but before verification documentation is submitted. Regarding these situations, FIs stated that the account is allowed to be funded, but those funds are frozen until necessary verification information is obtained and due diligence is completed, which must occur immediately after the account is opened.

Criterion 15.14.1

496. There is no requirement for FIs to adopt risk management procedures to set out conditions under which a customer is allowed to utilise a business relationship prior to verification.

Failure to Complete CDD Before Commencing the Business Relationship (c. 5.15); Failure to Complete CDD After Commencing the Business Relationship (c. 5.16):

497. See criterion 13 above. Liechtenstein law is in technical compliance with the FATF standard on this point.

498. The FIs interviewed stated that their policy prohibits establishing a relationship without the necessary due diligence information. Some representatives stated that they have filed suspicious activity reports in situations in which suspicions arose regarding persons attempting to establish

relationships, generally associated with suspicious circumstances rather than refusal to provide information or documentation. Additionally, industry representatives stated that their policy is to maintain up-to-date customer due diligence information for all clients. Some representatives noted exiting relationships due to issues related to due diligence information, including lack of information. However, as in the next section, institutions continue to maintain legacy accounts for which they have outdated and/or insufficient due diligence information.

Existing Customers—CDD Requirements (c. 5.17):

499. The transitional provisions of the DDA under Art. 39 expressly apply to business relationships existing at the time of entry into force of the Act. Art. 39 (3) of the DDA requires persons subject to the law to investigate and examine existing business relationships that give rise to suspicions of ML, FT, organised crime, or predicate offenses. In addition, Art. 39 (6) requires persons subject to the designate high risk customers and relationships within one year of the entry into force of the DDA, and to take additional measures under Art. 11(2) in relation to such relationships, including the repetition of certain CDD measures. While Art. 39 thus requires that CDD has to be carried out in relation to existing relationships that are considered suspicious or high risk, the law does not require CDD to be carried on existing customers at appropriate times, and on the basis of materiality.

Implementation

500. While the FIs interviewed stated that their policy is to obtain appropriate due diligence information on all customers, some noted that they maintain accounts for customers that were established before enactment of the DDA and for which the institution does not maintain adequate and updated due diligence information, commonly referred to as "legacy customers." Whereas some institutions noted that they have terminated relationships for issues related due diligence information, the fact that such legacy accounts are still maintained without adequate customer information is of concern. Furthermore, the obligation and practice calls for an FI to obtain the necessary due diligence information at the time the customer approaches the FI, rather than proactive collection of the information and documentation by the FI. This issue could be one related to implementation, either rooted in supervision or implementation and general attitude of industry participants or both. Accordingly, it is recommended that the authorities take note of this issue and address it accordingly through whatever means necessary, including guidance and supervisory practices.

Existing Anonymous Account Customers—CDD Requirements (c. 5.18):

501. Pursuant to Art. 39 of the DDA, which entered into force in 2004, existing contractual relationships relating to anonymous passbooks, accounts, or custody accounts or issued on bearer or in a fictitious name must be dissolved immediately or as soon as possible. Outflow of funds from such instruments is permitted only in the context of dissolution. If the instrument balance exceeds CHF 25,000, full identification and verification measures have to be applied before the deposit can be withdrawn. Below that threshold, the balance may be withdrawn without having to identify the beneficial owner. The assessors note that the threshold of CHF 25,000 is rather high, especially since a customer may hold multiple passbooks, etc.

Effective implementation

502. The financial sector in Liechtenstein is dominated by high risk activities and customers, with such activities and customers are specifically categorised by the FATF and the Basel Committee on Banking Supervision as posing higher risks to FIs. The majority of the financial services offered in the country are related to private banking, and much of the customer base involves nonresidents, complex legal structures, and customers introduced by foreign and domestic intermediaries. The risk presented by these high risk customers and activities is further amplified by a general business culture that holds confidentiality very highly, and that also relies heavily on trust between FIs and foreign and domestic intermediaries.

503. Throughout the assessment team's discussions with the private sector, representatives generally demonstrated that they are knowledgeable of and comfortable with the obligations set forth in the relevant legal provisions and with the concepts of AML/CFT more broadly.

504. However, in a financial landscape dominated by high risk activities and customers, FIs must take great care to thoroughly understand the characteristics of a relationship in order to effective assess customer risk and then to effectively manage that risk. While the authorities are entitled to adopt a risk-based approach that stratifies risk levels within the context of higher risk, all of these activities should nonetheless be subject to enhanced due diligence measures. However, this is not the case in Liechtenstein, where the activities and customers determined by the FATF and BCBS as posing heightened risk are not necessarily considered higher risk by the authorities or FIs. Failure to treat identified higher risk customers and activities as such negatively affects the effectiveness of the framework. Whereas some of the appropriate due diligence measures are reflected in the minimum requirements set forth in the DDA/DDO, interviews with the financial sector gave rise to some gaps. Notably, the effectiveness of the system is diminished by the general lack of development of exhaustive customer profiles based on reliable and up-to-date information and documentation, which are generally reliant on provision of information by intermediaries or might be entirely lacking or invalid in the case of legacy accounts. The policies described to assessors by financial institutions generally fell short of creating a complete view of the relationship, including how the immediate legal entity customer fits into a broader legal structure, the broader business and purpose of the broader legal structure, and the relationship to the beneficial owner. In that vein, while institutions described their policies to identify and, in certain circumstances, verify the identity of the beneficial owner, the described policies rarely confirmed the identity of and relation to the beneficial owner with reliable documentation. In accordance with the higher risk profile of the customer base and services offered, verified insight into the broader legal structure, and the relationship to the beneficial owner is necessary to understand a relationship, and to assess and manage the risk it presents.

505. The effectiveness of the due diligence framework is undermined by key factors prevalent to the financial system in Liechtenstein, as extrapolated from interviews with the private sector. Of particular concern is the uneven implementation of due diligence obligations across FIs. Certain FIs interviewed described very thoughtful and thorough policies and procedures. Alternatively, some FIs described due diligence programs that appeared to merely transpose 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.

506. The effectiveness of the due diligence framework is further affected by characteristics of the relationships between TCSPs and between TCSPs and financial institutions, as noted in paras. 378 and 379.

507. Other issues that affect the overall effectiveness of the system are weak risk assessments by some FIs despite high risks, risk assessments that are not always targeted based on the particular risks of the business, and the general lack of a sufficiently comprehensive understanding of a business relationship, which handicaps the eventual ongoing monitoring of the business relationship.

508. In sum, the combination of high risk activities and customers, the prevalent involvement of professional intermediaries (trustees and lawyers) who, at the same time "represent" the client and are generally relied upon by FIs for the performance of the CDD process, calls into question the effectiveness of the due diligence framework in Liechtenstein.

4.4. Politically Exposed Persons (R.6—rated PC in the 2007 MER)

4.4.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress since the Last MER

509. In 2007, Liechtenstein's rating on R.6 was based on the lack of requirement for enhanced CDD for business involving PEPs, in particular the lack of a requirement to obtain senior management approval to continue such business with somebody who during the course of the business relationship becomes or turns out to be a PEP, or to establish the source of wealth for customers or beneficial owners that are PEPs. The DDA has been revised to address most, albeit not all, of these deficiencies. There is still no express requirement to establish the source of wealth of PEPs.

Foreign PEPs—Requirement to Identify (c. 6.1):

510. Art. 11 (4) of the DDA provides that business relationships and transactions involving PEPs must in all cases be considered high risk and thus be subject to more intensive monitoring. To that effect, persons subject to the law must have in place adequate, risk-based procedures to determine whether a contracting party or beneficial owner is a PEP or not. While the FATF standard does not refer to such measures being "risk based," the authorities indicated that this is Liechtenstein's interpretation of "appropriate" and would be interpreted to require a higher level of sophistication for larger banks, whereas for sole legal practitioners a more simple procedure may be sufficient.

511. The term "politically exposed person" (PEP) is defined under Art. 2 (1) (h) of the DDA to cover any natural persons who are or have been (for the period of one year, beginning the day the person exits the public function) entrusted with prominent public functions in a foreign country and immediate family members of persons known to be close associates of such persons. "Prominent public functions" is further defined under Art. 2 of the DDO to include heads of state or government, ministers, deputy or assistant ministers, senior officials of political parties, members of parliaments, members of supreme courts, constitutional courts, or other high level judicial bodies whose decisions

are not subject to further appeal, members of courts of auditors or of the board of central banks, ambassadors, charges d'affaires, and high ranking officers in the armed forces, members of the administrative, and management or supervisory bodies of state-owned enterprises. "Immediate family members" is defined to include spouses or any other partners considered by national law as equivalent to a spouse, children, and their spouses or partners, and parents. "Close associate" means any natural person who has a joint beneficial ownership of a legal entity or any other close business relationship with a PEP, or has a sole beneficial ownership of a legal entity that is known to have been set up de facto for a PEP.

512. In contrast to Art. 2 (1) (h) of the DDA, the FATF standard clearly covers as PEPs those persons "who are or *have been* entrusted with public functions," and does not foresee a time limit. However, given that Liechtenstein provides for an obligation to apply enhanced due diligence in the case of higher risk, former PEPs relationships are still subject to enhanced monitoring in cases where a PEP presents a higher risk more than one year after leaving office.

Implementation

513. The FIs interviewed by assessors stated that their due diligence policies includes the identification of customers and beneficial owners who are foreign PEPs, and that identified PEPs are treated as high risk customers and subject to enhanced due diligence. Each of the FIs interviewed noted that they currently maintain accounts for PEPs.

514. Institutions described their process for identifying PEPs to include asking the customer as part of the on-boarding process and consultation with commercial databases. Some institutions noted that these processes are augmented by independent public searches via the internet. Generally, FIs described a heavy reliance on commercial databases for identification of PEPs. While commercial databases might prove to be a helpful resource, over reliance might prove problematic and create vulnerability for an FI.

Foreign PEPs—Risk Management (c. 6.2; 6.2.1):

515. Pursuant to Art. 11 (4)(b), persons subject to the law are obligated to obtain approval of at least one general manager before establishing or continuing a business relationship with a PEP and after entering into such a relationship, to obtain annual approval by one general manager so as to continue the relationship.

Implementation

516. The FIs interviewed described their processes to include a requirement to obtain management approval in order to establish a relationship with a PEP. Additionally, representatives noted that management representatives must approve the continued maintenance of a relationship with a PEP on an annual basis.

Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3):

517. For all business relationships, Art. 8 (1) of the DDA requires persons subject to the law to obtain information about the origin of assets. In contrast, Art. 20 (1)(c) of the DDO only requires persons subject to the law to establish the economic background of the contracting party and the origins of the assets deposited. The requirements under the DDA are thus more extensive than the provisions of the DDO and require that the source of wealth is established for all customers.

Implementation

518. The FIs interviewed stated that their policy includes taking measures to understand the source of funds of PEP customers. To determine the source of funds, FIs described their procedures to include obtaining information on the business activity and financial background of a PEP. This information would generally be provided by the customer. Some representatives described assessing this information and confirming the information by undertaking independent searches via the internet and commercial databases.

Foreign PEPs—Ongoing Monitoring (c. 6.4):

519. As noted under criterion 1 above, Art. 11 (4) of the DDA provides that business relationships and transactions involving PEPs must in all cases be considered high risk and thus are to be subject to more intensive monitoring.

Implementation

520. FIs stated that, in accordance with their consideration of PEPs as higher risk, PEP customers are subject to enhanced due diligence and are monitored with greater scrutiny. As discussed earlier, FIs generally described enhanced due diligence to include lower transaction thresholds, in certain circumstances a threshold of zero, above which transactions would require justification, documentation, and approval of a manager and, in some cases, a representative of the compliance function. Some financial institutions described performing internet and database searches on PEPs more frequently in order to ascertain any negative news or other information of relevance.

Domestic PEPs—Requirements (Additional Element c. 6.5):

521. Liechtenstein does not extend the measures prescribed under criteria 1–3 to PEPs who hold prominent public functions domestically.

Implementation

522. In line with the domestic law, FIs noted that they do not consider PEPs to include individuals who hold prominent public functions domestically. However, it warrants noting that some of the FIs interviewed were aware of the change in the international standard.

Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):

523. Liechtenstein has signed (2003) and ratified (2010) the Merida Convention.

Effective Implementation

524. Through interviews with the assessment team, representatives of FIs demonstrated their familiarity with the risks posed by PEPs and described their processes for mitigating that risk. Whereas the policies described are in line with the obligations outlined in the DDA/DDO, and comport with the FATF standards, the effectiveness of these policies are potentially undermined by an over-reliance on commercial databases and interned and infrequent reviews to identify if a relationship's PEP status has changed. These programs are not exhaustive program and should be augmented by additional research, all of which should be done periodically in order to minimise the risk that a financial institution is maintaining a relationship that an unidentified PEP.

4.5. Cross-Border Correspondent Banking (R7—rated PC in the 2007 MER)

4.5.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since the Last MER

525. Liechtenstein was previously rated PC on R.7 as the law did not require correspondent and respondent institutions to document their respective AML/CFT responsibilities, or require the correspondent institution to determine whether the respondent institution was subject to an ML/FT investigation or regulatory action. No safeguards were in place for payable through accounts and only banks, but no other FIs were covered by the provisions relating to cross-border correspondent relationships. The amended provisions in the DDA on cross border banking now addresses most requirements under Recommendation 7. However, the scope of the provisions is limited to relationships with respondent institutions in non-EEA countries.

Requirement to Obtain Information on Respondent Institution (c. 7.1):

526. Art. 11 (5) of the DDA and Art. 16 of the DDO limits the application of cross-border correspondent banking relationships only to respondent institutions in non-EEA countries. Other types of correspondent relationships for example those established in relation to securities or funds transactions, are not covered by the provisions of the DDA. Art. 11 (5)(a) prescribes that cross-border banking relationships are in all cases to be considered as high risk and thus subject to more intense monitoring. Those persons subject to the law who enter into cross-border correspondent banking relationships are required to obtain sufficient information about the respondent institution to understand the nature of that institution's business and to determine from publicly available sources the reputation of the institution and the quality of supervision that it is subject to. Art.16 (2) of the DDO further clarifies that obtaining information on the reputation of the respondent institution also involves determining whether the respondent institution has been investigated or been subject to supervisory measures for ML or FT.

<u>Implementation</u>

527. The FIs interviewed by the assessors stated that they hold correspondent accounts with financial institutions outside Liechtenstein, but do not offer cross-border correspondent accounts to

foreign FIs. Furthermore, the FIs generally do not offer domestic correspondent accounts. This information is commensurate with information provided by representatives of the authorities, who stated that they believed Liechtenstein to host only respondent institutions.

Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):

528. Pursuant to Art. 11 (5)(b) DDA, persons subject to the law are obliged to assess the respondent institutions AML/CFT controls before entering into a cross border banking relationship**.** There is not a specific requirement to ascertain that such controls be adequate and effective.

Implementation

529. As noted above, the FIs interviewed by the assessors generally stated that they are only respondent institutions, with correspondent accounts outside of Liechtenstein.

Approval of Establishing Correspondent Relationships (c. 7.3):

530. Art. 11 (5)(c) provides a requirement for persons subject to the law to obtain approval from at least one general manager before a new cross-border correspondent banking relationship may be established.

Implementation

531. The FIs interviewed by the assessors stated that their policy includes a process for establishing a correspondent relationship, which includes approval of the board of the institution.

Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):

532. Pursuant to Art. 11 (5)(d), the respective responsibilities with respect to the fulfillment of CDD requirements are to be documented by the correspondent and respondent institution.

Implementation

533. In describing their internal policies relevant to correspondent relationship, representatives of the FIs interviewed by the assessors stated such a relationship is governed by a contract, which delineates the responsibilities of each institution.

Payable-Through Accounts (c. 7.5):

534. Under Art. 16 (1) of the DDO, where payable through accounts are involved, correspondent institutions in Liechtenstein must satisfy themselves that the respondent institution in another country has verified the identity of all persons with direct access to that account, continuously monitors these persons and is in a position to submit the relevant information to the correspondent institution in Liechtenstein upon request.

Effective Implementation

535. In practice, this recommendation generally applies to FIs interviewed in as much as they are respondent institutions to foreign FIs. In that respect, representatives described policies in line with the DDA/DDO and the FATF standard. Generally, representatives were aware of the higher-risk nature of correspondent banking activity.

4.6. New Technologies and Non-Face-to-Face Transactions (R8—rated PC in the 2007 MER)

4.6.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since Last MER

536. Liechtenstein's PC rating in 2007 was based on the lack of a sufficiently comprehensive requirement to prevent the misuse of new technologies in the financial service industry, or to address and mitigate the risks involved in non-face-to-face transactions and business relationships. While more stringent measures are now in place in for non-face–to-face business relationships, the provisions on new technologies can be further improved.

Misuse of New Technology for ML/FT (c. 8.1):

537. Art. 9(2) of the DDA stipulates an obligation for persons subject to the law to pay special attention to threats emanating from the use of new technologies. The obligation under the FATF standard, however, is more far reaching and requires FIs not just to pay attention to, but to have in place policies or measures to prevent use of such technological developments for ML/FT.

538. Regarding e-money, institutions that provide e-money services are governed by the E-Money Act and supervised by the FMA.

Implementation

539. According to information provided to assessors, the most advanced new technology offered by the FIs interviewed is internet banking, which is offered by very few of the institutions interviewed. Those FIs that offer the product described it as offering account information and providing the customer with a means of communicating transaction instructions to the FI. The institutions asserted that new relationships cannot be established via the internet. The FIs interviewed also noted that the internet banking platform is merely a means of submitting to the FI a request for processing a transaction. Accordingly, institutions noted that transactions initiated through the internet are given the same review and scrutiny as transactions initiated through other means (i.e. via phone call or in person), which often include review by the relationship manager and any other applicable due diligence processes. It should be noted that one FI offers an internet banking platform tailored to smart phones; however, the capabilities of the program and associated policies are the same as standard internet banking.

540. With respect to e-money, this industry in Liechtenstein is very small, with one entity engaged in such services. The rules governing this industry, along with the size of the industry, results in the risk associated with such institutions as low.

Risk of Non-Face-to-Face Business Relationships (c. 8.2 and 8.2.1):

541. Art. 11(1) in combination with Art. 11(3) of the DDA prescribes that business relationships where the contracting party is not personally present for purposes of identification are in all cases to be considered high risk and subject to more intense monitoring, and require the application of additional identification measures in relation to the contracting party. Art. 6(3) of the DDO further stipulates that in cases where a business relationship is established by way of correspondence, identification and verification measures must be based on original documents with probative value (see R.5 for further details on what qualifies as such) or certified copies thereof, and that the CDD information provides has to be signed by the contracting party. Once a non-face-to-face business relationship has been established, Art. 11(1) requires enhanced monitoring.

542. No provisions are in place that would require FIs to implement policies and procedures to address the risks associated with non-face-to-face transactions (as opposed to business relationships) as part of the ongoing due diligence.

Implementation

543. Generally, the FIs interviewed noted that they do not establish relationships with customers who are not present in person. As noted earlier, the institutions that offer internet banking asserted that new relationships cannot be established via the internet. Industry representatives noted that it would be possible for an existing customer who has previously been identified to establish a new relationship on behalf of a new beneficial owner without doing so in person, but that the institutions' full due diligence procedures would apply. As noted under criteria 8.1, FIs that offer internet banking stated that such services do not allow for the establishment of relationships. Only one FI interviewed stated that they establish relationships without personal contact, in very narrow circumstances, and that they obtain all the necessary due diligence information.

544. The FIs interviewed noted that customers generally initiate transactions by means other than in-person (e.g. via phone). As discussed under R.5, the representatives interviewed by assessors described their processes for processing and verifying transactions, and monitoring for suspicious activity.

Effective implementation

545. The limitation of new technologies to internet banking, the offering of internet banking services by only a few FIs, and the very limited services offered in those instances, lead to the assessment that the current landscape with respect to new technologies is not particularly high risk. However, authorities should remain cognizant that FIs might broaden their offering of technologically advanced products in order to meet the evolving demands of customers and those financial authorities and FIs must understand the risks posed by such products and implement policies to effectively mitigate those risks.

546. The FIs interviewed by assessors generally noted the importance of person-to-person contact with the customer when establishing a new relationship, even in an intermediated relationship in which the customer might or might not be the beneficial owner. However, in cases where an intermediary has a pre-existing relationship on behalf of one customer, that intermediary could establish a new account on behalf of a different customer without doing so in person. Whereas the intermediary has been identified, and represents the customer in each instance, such arrangements could pose additional risk to the FI.

4.6.2. Recommendations and Comments

- The authorities should formulate more practical and broadly defined risk indicators (i) to ensure that even the slightest indication of risk results in a review of the categorisation for a given customer, business relationship, or service; (ii) to promote a better understanding amongst the industry as to what "risk" is; and (iii) to assist in applying more consistent approach by FIs to defining the various risk categories;

- Revise Art. 5(2)(b) of the DDA to require the application of CDD measures also to occasional transactions that are not cash transactions;

- For customers that are natural persons, introduce an express legal obligation for FIs to determine in all cases whether a customer is acting on behalf of another person, and to take reasonable steps to obtain sufficient identification data to verify the identity of that other person;

- Verification measures for legal persons should be strengthened, and incorporate the methods suggested in the General Guide to Account Opening and Customer Identification;

- Art. 11 of the DDO should be amended to require verification measures for beneficial owners to be based on relevant data and information obtained from reliable source;

- Art. 8(2) of the DDA should be revised to impose an obligation on persons subject to the law to carry out reviews of existing records as part of their ongoing CDD;

- The blanket exemption for CDD under Art. 10 of the DDA should be removed. Simplified CDD measures should be allowed only in cases of a proven low risk and at least some minimum level of CDD should be required to be carried out in all cases. For foreign customers, simplified CDD should be allowed only where Liechtenstein (as opposed to the FI) is satisfied that the country in which the customer is located complies with and effectively implements the FATF standard;

- Art. 18(2) should allow only for verification, but not identification measures to be delayed in certain circumstances. The possibility of delayed verification should be limited to situations where it can be assured that the delayed measures are carried out as soon as reasonably practicable, and all aspects of the ML risks are effectively managed. The legal framework under the DDA should set out an express requirement to apply CDD measures to all existing customers on at appropriate times, and on the basis of materiality;

- The threshold of CHF 25,000 for identification of existing anonymous or bearer passbooks, accounts, or custody accounts should be eliminated;

- For business relationships with PEPs or beneficial owners that are PEPs, consider aligning the provisions of the DDA and the DDO to set out an express obligation for FIs to establish the source of wealth in all cases;

- Art. 11(5) of the DDA and Art. 16 of the DDO should also extend to correspondent relationships with respondent institutions in other EEA member states;

- Art. 11(5)(b) of the DDA should be amended to require FIs not only to assess the respondent institutions AML/CFT controls before entering into a cross-border banking relationship, but also to ensure that such controls are adequate and effective;

- Art. 9(2) of the DDA should set out an obligation for FIs to have in place policies or measures to prevent use of technological developments for ML/FT;

- Put in place provisions to require FIs to implement policies and procedures to address the risks associated with non-face-to-face transactions (as opposed to business relationships) as part of the ongoing due diligence;

- Consider whether the definition of beneficial owners under Art. 2 of the DDA and Art. 3 of the DDO should be revised to expressly cover the settlor of trusts, regardless of whether they maintain express control powers;

- Commensurate with the high risk characteristics of business activities and customers in Liechtenstein, the FMA should compel Liechtenstein FIs to increase their due diligence focus towards the beneficial owner of the customer, including through verification measures;

- Consider means of ensuring that FIs develop more thorough customer profiles based on reliable information and documentation, including by gaining a thorough understanding of how a legal entity customer fits into a structure and the relationship between the customer and the beneficial owner and other relevant parties;

- Regarding information and documentation necessary to understand the relationship amongst legal entity customers, intermediaries, and beneficial owners, particularly in the case of foreign parties, consider clarifying what information and documentation is necessary to effectively undertake this task;

- Consider means of ensuring that FIs are able to compel any relevant due diligence documentation, including documentation beyond the minimum requirement, from customers represented by intermediaries, or otherwise;

- Consider requiring FIs to undertake periodic reviews of CDD information, based on risk, to augment industry practice of ad hoc review procedures;

- Consider requiring the compliance function within an FI to take an active role in the customer on-boarding and transaction monitoring and review processes, and to require compliance and management approval according to risk;

- Consider requiring FIs applying simplified due diligence to obtain beneficial ownership information, information on the structure of the client, and other information necessary to understand the relationship, as well as to conduct periodic reviews of the customer;

- Consider requiring FIs to undertake internal institution risk assessments of all customer relationships and transactions, and any other relevant factors, on a periodic basis, which should then inform internal policies and assist in managing customer risk; and

- Consider requiring FIs to proactively apply complete CDD on legacy customers.

4.6.3. Compliance with Recommendations 5–8

	Rating	Summary of factors underlying rating
R.5	**PC**	• 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; • 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; • The blanket exemptions for CDD under Art. 10 of the DDA are not permissible under the FATF standard; • 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; • 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; • High threshold of CHF 25,000 for identification of existing anonymous or bearer passbooks, accounts, or custody accounts; • CDD obligation for occasional transactions only extends to cash transactions;

		Effectiveness • 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); • Due diligence measures fall short of the enhanced due diligence measure**s** required for higher-risk categories including issues related to verification that weaken CDD measures; • Lack of emphasis on understanding the nature and purpose of the relationship, including understanding related legal structures and the relationship to the beneficial owner; • Risk indicators issued to assist FIs in defining risk categories for its customers and transactions do not seem practical.
R.6	**LC**	**Effectiveness** • General (sometimes sole) reliance on commercial databases for the identification of PEPs; sometimes with infrequent reviews and minimal use of other means of identification.
R.7	**LC**	• Provisions on cross-border correspondent banking do not apply for respondent institutions in other EEA member states; • No requirement for Liechtenstein correspondent institutions to ensure that respondent institutions AML/CFT controls are adequate and effective.
R.8	**LC**	• 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; • No provisions are in place that would require FIs to implement policies and procedures to address the risks associated with non-face to face transactions (as opposed to business relationships) as part of ongoing due diligence.

4.7. Third Parties and Introduced Business (R.9–rated PC in the 2007 MER)

4.7.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since Last MER

547. In 2007, Liechtenstein was rated PC on Recommendation 9 as the delegation of CDD was defined to permissively include also ongoing monitoring, and the countries in which an acceptable third party intermediary could be based was not pre-defined. These deficiencies have all been addressed. However, the amended provisions pose some new legal issues, as outlined in this report.

Legal Framework:

- DDA and
- DDO.

Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1); Availability of Identification Data from Third Parties (c. 9.2):

548. Art. 14 of the DDA and Art. 24 of the DDO regulate the delegation of CDD obligations. Art. 14 of the DDA permits the delegation of certain due diligence measures (identification and verification for the contracting party and beneficial owner, and establishment of a business profile) by a person subject to the law, provided:

- the person to which these duties are delegated to is a person subject to due diligence under Liechtenstein law; or
- is a natural or legal person abroad that is subject to the third EU Directive and is supervised; or
- is a natural or legal person abroad that is subject to an regulation equivalent to those contained in the third EU Directive, and is supervised.

549. The delegation has to be documented, and sub-delegation by delegates is not permitted. While the authorities conceded to the fact that the implementation of this sub-delegation prohibited would pose a challenge in case of a foreign intermediary as Liechtenstein law cannot be enforced abroad, representatives of the FMA considered that this language would require domestic FIs to reflect such a prohibition in the contract with the foreign intermediary. Since the provisions relating to delegation of CDD are not often used in practice, it was not possible to confirm the FMA's view with the FIs.

550. Agent relationships are expressly exempted from the scope of Art. 14 based on para. (4), which states that Art. 14 does not apply to outsourcing or representation arrangements in which the outsourcing service provider or representative is to be regarded as part of the person subject to the

law. The possibility and scope of permissible outsourcing under the law are further prescribed under Art. 24a of the DDO.

551. Art. 24 of the DDO provides that where a person subject to the law arranges for identification or verification measures or measures to establish a business profile to be carried out by a delegate, the person relying on the delegate must in all cases ensure that the delegate obtains or prepares all documents and information required under the DDA, and transfers them without delay to the person in Liechtenstein relying on the delegate. Information on the identity of the delegate has to be included as well. Art. 24(b) further requires the delegate to confirm with his signature that any copies of identification and verification documents match the originals or certified copies, and that the contracting party has provided a signature, verifying the identification and verification information for the beneficial owner.

552. Art. 24 of the DDO is thus consistent with the FATF standard in that its para. (a) imposes a requirement on the person subject to the law to obtain from delegate in all cases both the information and the documentation required under the provisions of the DDA, which includes copies of identification data and other relevant documentation pertaining to CDD.

Regulation and Supervision of Third Party (applying R. 23, 24, and 29, c. 9.3):

553. As described in the overview section above, Art. 14 of the DDA permits a delegation of CDD measures only to persons that are subject to AML/CFT requirements under the third directive or an equivalent regulation, and that are supervised. Pursuant to Art. 14(3) of the DDA, it is the FMA's responsibility to issue a list of countries that are considered to have AML/CFT regimes in place equivalent to those under the Third EU Directive. In making this determination, the FMA has relied upon a Common Understanding Between Member States on Third Country Equivalence under the Third EU Directive. As of February 2012, the FMA has listed 12 countries outside the EU as countries with AML/CFT measures equivalent to those under the Third EU Directive, namely Australia, Brazil, Hong Kong, India, Japan, Canada, Mexico, Switzerland, Singapore, South Africa, South Korea, and the USA. In addition, a number of crown dependencies and overseas territories of various EU member states as well as countries that are part of the EU membership of France and the Kingdom of the Netherlands are listed.

554. While Art. 14 of the DDA refers to "countries that are subject to" the Third EU Directive, the FATF standard requires that FIs/DNFBPs satisfy themselves that the third party "has measures in place to comply with" the requirements set out under FATF Recommendations 5 and 10. This slight difference in language is relevant in that EU Directives are not directly applicable, but have to be transposed into national law. Accordingly, the fact that a country is subject to the EU Directive does not necessarily mean the relevant national provisions are fully compliant with the Directive. This has also been noted by the EU member states in the Common Understanding, where it is highlighted that "the list does not override the need to continue to operate the risk-based approach. The fact that a financial institution is based in a third country featuring on the list only constitutes a rebuttable presumption of the application of simplified CDD. Moreover, the list does not override the obligation under Art. 13 of the Directive to apply enhanced customer due diligence measures in all situations

which by their nature can present a higher risk of money laundering or terrorist financing, when dealing with credit and financial institutions, as customers, based in an equivalent jurisdiction."

Adequacy of Application of FATF Recommendations (c. 9.4):

555. The countries enumerated in the FMA Communication correspond to those mentioned in the common understanding of EU member states on third country equivalence (as amended) plus the member states of the EU/EEA and French and Dutch overseas territories and U.K. Crown Dependencies. The list has been drawn up by EU member states based on information available on whether those countries adequately apply the FATF Recommendations and Methodology.

556. While the authorities have thus clearly defined the countries from which an eligible third party introducer may be based in, this determination was not based on an assessment as to whether that foreign country adequately applies the FATF Recommendations.

Ultimate Responsibility for CDD (c. 9.5):

557. Art. 14(2) of the DDA expressly stipulates that in case of a delegation, the ultimate responsibility for compliance with the CDD obligations under the law remains with the person subject to the law. The authorities stated that in a case where both the intermediary and the person relying on the intermediary are based in Liechtenstein and are persons subject to the law, the obligation would be on both parties.

Effective implementation

558. In meetings with representatives of the private sector, as well as with the FMA, it became clear that business relationships involving clients of foreign TCSPs, lawyers, and other financial intermediaries being introduced to the Liechtenstein FIs would generally not be handled as introduced business relationships pursuant to Art. 14 of the DDA. Rather, foreign trustees or other intermediaries would be considered as contracting party, and their client as the main beneficial owner. Accordingly, it would be the foreign TCSP that is being identified and whose identity is verified, and who would then indicate the name of the beneficial owner and verify the accuracy of this information with his signature. Under the DDA, no other verification measures have to be taken in relation to the client of the foreign intermediary for the purpose of the foreign TCSP's business relationship with its client. In essence, it is the foreign law that would determine how much information the foreign trustee has to obtain, verify, and keep in relation to the beneficial owner. It should be noted, however, that the financial institution would be required to ensure that information provided by the intermediary is sufficient to fulfill the applicable CDD requirements under the DDA.

559. Such arrangements, which can be considered de facto intermediated relationships, can have implications for and pose heightened risk to the system in that the specific rules governing intermediated relationships would not be applied. It follows, then, that the various parties involved in a customer relationship (e.g. the financial institution, TCSP, etc.) do not have the clear grounds to compel information from the other, including information necessary to developing a clear understanding of a customer and assessing the customer risk, that would otherwise be provided for according to obligations on intermediated relationships. Nonetheless, the financial institutions are not

permitted to establish a business relationship with a contracting party where the CDD requirements may not be complied with.

560. The provisions of the DDA pose some risk in that the DDA permits foreign FIs to serve as delegates if they are subject to AML/CFT requirements under the third directive or are from a country that has been determined by the EU member states to apply an AML/CFT regime that is equivalent to that under the Third EU Directive. While these considerations may be a good indicator for whether or not the delegate has measures in place to comply with FATF Recommendations 5 and 10, and is located in a country that adequately applies the FATF Recommendation, additional verification measures to that effect should be taken by Liechtenstein. The assumption that a foreign delegate has met these criteria purely based on the fact that the respective country he is located in is a country subject to the EU Directive on ML, or is on the EU's equivalency list is not sufficient.

4.7.2. Recommendations and Comments

- Liechtenstein should take a more independent approach to determining from which countries intermediaries may be for purposes of introduced business and reliance on the introducers CDD measures.

- The authorities should conduct an assessment of the supervisory framework and of the CDD measures in place in the concerned countries where the third parties are located and limit the location of third parties to those countries that have a satisfactory supervisory framework and CDD measures;

4.7.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**LC**	• Presumption that all EU and EEA countries adequately apply the FATF Recommendations.

4.8. Financial Institution Secrecy or Confidentiality (R.4)

4.8.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since the Last MER

561. In 2007, the assessors rated Liechtenstein LC on Recommendation 4 based on the fact that Liechtenstein relied mostly on case law to override statutory provisions to allow for the exchange of confidential information. The appeals procedure in place was found to be undermining the efficiency of information exchange, and the prosecution did not have express power to access confidential information held by insurance, asset management, or investment undertakings. In 2009, the relevant provisions in the DDA have been revised to allow for the exchange of information also in cases in which secrecy provisions or fiscal interests are violated, and to put an obligation (as opposed to grant discretion) to the FMA to exchange information internationally, including in cases where there is no reciprocity.

Legal Framework:

- Due Diligence Act;
- Banking Act (BA);
- E-Money Institutions Act (EIA);
- Insurance Supervision Act (ISA);
- Asset Management Act (AMA);
- Law on Certain Undertakings for Collective Investment in Transferable Securities (UCITSG);
- Payment Systems Law (PSL);
- Insurance Mediation Act (IMA);
- Investment Undertakings (IUA);
- Law on the Control and Oversight of Public Enterprises (COPE);
- Financial Market Authority Act (FMAA); and
- FIU Act.

Inhibition of Implementation of FATF Recommendations (c. 4.1):

562. As reflected in the IMF assessment report of 2007, bank and financial secrecy has long been a fundamental component of Liechtenstein's financial service business. In recent years, however, due to pressure applied by the international community the U.S. and the European Union countries in particular, Liechtenstein has entered into a number of bilateral agreements that facilitate the exchange of information, including confidential financial information and in cases involving fiscal matters. At the time of the onsite mission, an automatic exchange of financial data between EU member countries was being discussed, with Liechtenstein considering its position on this issue.

563. Since the last assessment in 2007, Liechtenstein has amended sector specific laws such as the BA to regulate the exchange of information in greater detail and to eliminate the need to rely on case law to determine the scope within which such an exchange is admissible. However, some issues of legal inconsistencies remain as noted more specifically below.

Definition of secrecy—relevant provisions applicable

564. Secrecy provisions relevant for the discussion of this Recommendation are enshrined in Art. 14 of the BA, Art. 44 of the ISA, Art. 21 of the AMA, Art. 25 of the UCITSG, Art. 18 of the EIA, Art. 5 of the PSL, Art. 4a of the IMA, and Art. 15 of the IUA.

565. The secrecy provisions under the BA, ISA, UCITSG, EIA, PSA, and IMA are identical and require members of governing bodies and employees of FIs to keep secret all facts that have been entrusted or become accessible to them as a result of the business relations with clients. A failure to comply with these provisions may result in criminal responsibility. All provisions stipulate that the secrecy obligation applies without time restriction and without prejudice to legal provisions governing the provision of testimony or information to the criminal courts or supervisory bodies. The secrecy provisions under the BA, ISA, UCITSG, EIA, PSA, and IMA explicitly grant employees and governing bodies of FIs the power to share confidential information with foreign supervisors. The provisions of the AMA and the IUA are slightly narrower in that they do not expressly override banking secrecy for purposes of cooperation with supervisory authorities, whether domestic or foreign.[42] In the context of international cooperation, Art. 27h of the FMAA would take precedence over the AMA and IUA and allow in certain situations allow the FMA to share otherwise confidential information with foreign supervisors for purposes of AML/CFT.

Ability of competent authorities to access information: FMA

566. In line with the provisions under sector specific laws as mentioned above, Art. 28(4) of the DDA grants the FMA access to any information held by persons subject to the law that it may need to carry out its supervisory functions for purposes of the DDA. Information requests by the FMA are issued in the form of an order under the Administrative Proceedings law and are thus subject to an appeal to the FMA Complaints Commission and from there to the Administrative Court. A lack of provision of requested information by the person subject to the law may result in the imposition of an administrative fine by the FMA.

Ability of competent authorities to access information: FIU and Law Enforcement Agencies (LEA)

567. As noted under the analysis of R26, Art. 4 of the FIU Act provides that the FIU shall obtain information necessary for its functions subject to legal provisions relating to the protection of secrecy. The authorities assured the assessors that in practice this provision does not prejudice the power of the FIU to obtain information when so requested, however there is no firm legal ground for supporting this view.

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[42] The relevant provisions states that the "statutory provisions on testimony or the obligation to provide information to the criminal courts or supervisory" shall apply notwithstanding the secrecy obligations set out in the AMA and IUA. No reference is made to the ability by supervisory authority to share such information with other supervisors.

568. Authorities stated that the FIU would have indirect access to confidential information through the FMA. The evaluators noted that the FMA's power to request confidential information under Art. 28(4) of the DDA is limited to information required for its supervisory activities. Authorities pointed to the FMA power to obtain information through extraordinary inspections under Art. 28(1)(c) which would apply in situations where information is sought for other than supervisory purposes. Art. 28(1)(c) states that the FMA may carry out extraordinary inspections if there are "indications for doubts as to fulfillment of due diligence requirements" or "circumstances that appear to endanger the reputation of the financial center." The authorities held that media reports as well as international requests for information could be considered to indicate an endangerment of the reputation of Liechtenstein's financial center and could thus warrant an extraordinary inspection. Assessors have doubts, on the one hand, about this legal interpretation as the extraordinary inspections power is foreseen in the context of Art. 28, which clearly subjects the power of the FMA to demand information "to fulfill its supervisory function." In the presence of this requirement, it is not clear how the FMA could seek information on behalf of the FIU. On the implementation side, the FMA's view on this point could not be confirmed through any practical examples. The FMA stated that at the time of the onsite visit, there had never been a need for the FMA to use its powers under Art. 28(1)(c) to obtain confidential information from an FI or DNFBP outside the scope of its supervisory mandate. The cases which were brought to the attention of the team confirm that Art. 28 has been used by the FMA only in the context of or an inspection of a regulated entity. Thus, some doubt remains as to whether the FIU could indeed obtain confidential information through the FMA so as to respond for example to a foreign request for exchange of information. The issue is of particular relevance giving the importance that international cooperation with foreign counterparts play in a country like Liechtenstein

569. As far as LEAs are concerned, issues are noted in the analysis of Recommendation 3 with regard to legal privilege unduly applying to auditors.

Sharing of Information between domestic competent authorities:

570. Art. 36 of the DDA regulates cooperation between competent authorities in Liechtenstein and provides that all domestic authorities, in particular the courts, the Office of the Public Prosecutor, the FMA, the FIU, the National Police, and other authorities responsible for combating ML, FT, or organised crime are required to provide all information and transmit all records to each other that are necessary for the enforcement of the DDA. In addition, Art. 6 of the FIU Act empowers the FIU to cooperate and exchange information and documents with other competent domestic authorities in the area of AML/CFT, in particular with the courts, the Office of the Public Prosecutor, the police, and the FMA. For the FMA, a general obligation to cooperate with other domestic authorities to the extent this is necessary to fulfill its function is enshrined in the various sectoral laws, for example Art. 31b of the BA.

571. It is unclear, however, whether the FMA can also share information that is subject to confidentiality with domestic counterparts. On the one hand, Art. 36 of the DDA provides for competent authorities, including the FMA, to share any type of information domestically; however the sector specific laws permit the sharing of information by the FMA only with other supervisory authorities and if provided for under more specific legal provisions. For example, Art. 31a(1) of the BA provides that the FMA is subject to official secrecy with regards to any confidential information it

has received under the law. Art. 31a(2) sets out an exemption to this rule and allows for the sharing of confidential information if more specific legal provisions allow for it. Similar provisions are set out under Art. 47a(2) of the ISA, Art. 126(2) of the UCITSG, Art. 34(2) of the EIA, Art. 21(2) of the IMA, Art. 61(2) IUA, and Art. 39 AMA.

572. Since Art. 36 of the DDA does not specifically override the secrecy provisions in the BA, there is a conflict in the legal provisions applicable. The authorities' views on the relationship between DDA and sector-specific laws were inconsistent throughout the mission. During some meetings, the FMA indicated that for purposes of a domestic exchange of confidential information for purposes of combating ML or FT, the DDA would be considered the more specific law. Accordingly, if the exchange of information would pertain to, for example, confidential banking information, the FMA would be permitted under Art. 31a(2) to exchange such information with other domestic authorities. The same reasoning would apply to all other types of FIs under the relevant provisions of their sector-specific laws. In a few other meetings, it was stated that the provisions of sector-specific laws would constitute the more specific provisions. In the above-mentioned example, the FMA would thus not be permitted to exchange confidential information obtained by a bank with the FIU or other domestic authorities as the general secrecy provision under Art. 31a(1) of the BA would prohibit it from doing so. While the relationship between the DDA and sector-specific laws has so far not been clarified by the constitutional court or the Court of Justice, the Supreme Administrative Court in the context of an appeals decision expressed its view that the DDA would be *lex specialis* over the Law on Trustees and Law on Lawyers and that the DDA provisions providing the FMA with the power to compel confidential information from trustees and lawyers prevail. This view has to be understood as nonbinding, as it is the Court of Justice and not the administrative court that is competent to rule on possibly violations of secrecy provisions in specific case, and it is limited to the relations between the DDA and the Law on Trustees and the Law on Lawyers. Moreover, even if this decision clarifies the relation between the DDA power and the sector specific law in question on the power of the FMA to compel confidential information from trustees and lawyer, the scope of that power remains legally limited to the fulfillment of the FMA's supervisory function and would not extend to the obtaining information for the purpose of sharing of it with domestic authorities. More in general, it would not provide a ground for the FMA to share information domestically with regard to other sector-specific laws that, as explained, have specific confidentiality requirements with regard to the sharing of the information. To avoid legal challenges on this issue, authorities should clarify that the provisions under sector-specific laws do not limit the FMA's power to share confidential information with other domestic authorities competent in the area of AML/CFT.

573. The FMA stated that, in practice, it never encountered a case where the FIU or any other competent authority requested it to share confidential information. The issue thus seems to be mostly a legal and not a practical one. However, given the sensitivity of secrecy provisions in Liechtenstein and to avoid any legal challenges, the law should expressly override the confidentiality provisions under sector-specific laws.

Sharing of information with foreign competent authorities:

574. As indicated under Recommendation 40, both the DDA and sector-specific laws grant the FMA the power to exchange information with foreign counterparts, including information covered by financial secrecy. In that context, it is noted that Art. 37 of the DDA requires that in order for the

information to be shared, the foreign supervisor must be subject to the same secrecy provisions as contained in Art. 23 of the COPE. This may pose an obstacle to the effective exchange of confidential information internationally.

575. The FIU may share information with foreign counterparts based on Art. 7 of the FIU Act. However, there is some ambiguity, in that confidential information is expressly exempted from this power. For a detailed discussion of this issue, see Recommendation 26 above.

Sharing of information between FIs:

576. Neither the DDA nor sector-specific laws set out an express power by FIs to share confidential information in the situations required under Recommendations 7 and 9. The authorities stated that FIs through their General Terms advise the contracting party that customer data is provided to a third party if this is required under Liechtenstein law, i.e., the provisions of the DDA. However, given the issues noted with regard to conflicting provisions and the relevance of confidentiality, it is not clear that confidential information could be shared in the situations required under Recommendations 7 and 9.

577. For wire transfers, the provisions of EU Regulation 1781/2006 on wire transfers apply directly in Liechtenstein and all entities that can make payments by wire transfer are directly bound by it. Arts. 5(1) and 7(1) of the Regulation require the provision of complete payer information (name, address, and account number) with wire transfers. When there is a domestic transfer or intra-EU transfer where complete payer information might not be supplied, Art. 6 of the Regulation requires that an institutions shall make complete payer information available to the payment services provider of the payee on request within three days.

Effective Implementation

578. The fact that secrecy provisions under Liechtenstein law are not always consistent and clear pose some challenges and may inhibit the effective implementation of the FATF recommendations, especially considering the culture of confidentiality observed by the evaluators in many of the meetings with the private sector.

579. From a legal perspective, the provisions in place as outlined above ensure that in the context of a criminal case, the existence of financial secrecy does not inhibit the implementation of the FATF Recommendations (safe for the case of auditors who benefit of a legal privilege even if in Liechtenstein they do not represent their clients in proceedings).

580. In the absence of a criminal case, access by the FMA to confidential information is warranted with respect to all types of FIs, and the FMA may also share such information with foreign supervisors, although under unduly restrictive conditions. Concerns remain, however, with respect to access to confidential information by the FIU given that Art. 4 of the FIU Act expressly subjects the power to obtain information that it is relevant to undertake its functions to "legal provisions relating to the protection of secrecy." At the same time, the legal provisions in place are not clear on whether the FMA may share confidential information with other competent authorities, notably with the FIU, although at the time of the onsite visit this particular legal issue had not had a negative impact in

practice, given that the FMA stated that it never encountered a case where the FIU or any other competent authority requested it to share confidential information.

581. As indicated during the 2007 assessment, orders issued by the FMA, including for access to confidential information could be subject to a rather lengthy appeals process (see discussion under Recommendation 3), which in turn could become a concern in situations where timely access to information is of essence.

582. Regarding implementation, the financial institutions interviewed by the assessors stated that they believe implementation and compliance with the relevant legal obligations is not inhibited by any legal secrecy provisions. However, as noted under Recommendation 26 with regard to the access of the FIU to confidential information from reporting entities, most of the interviewed ones stated that they had never received such requests from the FIU. Some also stated that they would not provide the requested information to the FIU.

4.8.2. Recommendations and Comments

- Undertake a review of all secrecy provisions and harmonise them with AML/CFT-related requirements and responsibilities, in order to avoid any conflict of provisions or ambiguities. Clarify that DDA overrides all secrecy provisions of sector-specific laws.

- Eliminate any reference to secrecy as a condition for obtaining information (Art. 4) and for the exchange of information with foreign FIUs (Art. 7)

- Clarify that the secrecy provision enshrined in sector-specific laws do not inhibit FI's ability to share confidential information with other FIs in cases where this is required under FATF Recommendation 7 or 9, for example where a Liechtenstein FI is a respondent institution or is relied upon by a foreign FI to carry out some of the CDD measures;

- Expressly grant the FMA the legal power to share otherwise confidential information domestically for purposes of AML/CFT, either by amending sector specific laws or by clarifying in the DDA that the FMA's powers under Art. 36 supersede any secrecy provisions in other laws.

- Remove 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.

- Determine whether the lengthy appeals process for orders by the FMA to provide confidential information could constitute an obstacle to the effective implementation of the FATF Recommendations and if so, take measures to address this issue.

4.8.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**PC**	• 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; • No measures to clarify that secrecy provisions in sector specific laws to not inhibit FI's ability to share confidential information in cases where this is required under FATF Recommendation 7 or 9; • 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.

4.9. Record Keeping and Wire Transfer Rules (R.10 and SR.VII)

Record Keeping (R 10—rated C in the 2007 MER)

4.9.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations

583. In 2007, no shortcomings were identified with respect to Liechtenstein's record keeping provisions.

Legal Framework:

- Due Diligence Act;
- Person and Company Act (PGR).

Record Keeping and Reconstruction of Transaction Records (c. 10.1 and 10.1.1):

584. Art. 20 of the DDA sets out a general record keeping obligation and Art. 27 of the DDO prescribes the obligation in the law in greater detail. Pursuant to Art. 20 of the DDA, persons subject to the law are required to document that they comply with the CDD and STR obligations under the law by maintaining due diligence files. Art. 28 of the DDO sets out detailed requirements with respect to the manner in which records are to be kept. All documents and records are to be maintained in Liechtenstein, and in a manner that they match the document on which they are based, are accessible and available at all times and can be rendered readable at any time and in a speedy manner.

585. Under Art. 20 of the DDA, transaction-related records and receipts, including records describing transactions and asset balance, any clarifications obtained in relation to transactions and STRs filed with the FIU, must be maintained for a minimum of ten years from the conclusion of the

transaction or from the preparing of the transaction. There are no specific mechanisms in place that would ensure that records permit the reconstruction of individual transactions. The authorities stated that the necessary components of transaction records would result from the overarching requirements set out by Arts. 1045 and 1046 of the PGR, which would thus ensure that records held by persons subject to the law are sufficient to permit the reconstruction of individual transactions. While the relevant provisions may require the keeping of records in relation to transaction carried out by a specific FI in its own name, they do not impose a requirement on FIs to ensure that transaction records are sufficient to permit the reconstruction of all individual transactions carried out by or on behalf of a client.

Implementation

586. The FIs interviewed stated that their policy is to maintain all due diligence and transaction related records for at least ten years, in accordance with the law. Representatives noted that the information maintained would allow for reconstruction of all individual transactions.

Record Keeping for Identification Data, Files, and Correspondence (c. 10.2):

587. Client-related records, including identification and verification documents for the contracting party and beneficial owners and the business profile to be established under Art. 8 of the DDA must be kept for a minimum of ten years from when the business relationship has ended or from when the occasional transaction was carried out. There is no specific obligation in the law to also keep business correspondence, as required under the FATF standard.

588. Neither the FMA nor the courts have express power to extend the record keeping requirement under Art. 20 of the DDA. However, the authorities held the view that for the FMA such power is implied in Art. 28 of the DDA, which allows the FMA to issue orders in general. In practice, the FMA has never issued an order, requiring an FI to maintain records beyond the statutory prescribes period. The prosecutor further stated that in practice, records would be seized under the provisions of the StPO in cases where the record keeping period is about to expire.

Implementation

589. Financial institutions noted that their policy is to maintain all such records and files for a minimum of ten years after the customer relationship has been terminated.

Availability of Records to Competent Authorities in a Timely Manner (c. 10.3):

590. Art. 28 of the DDO requires that the documentation and information required to be maintained under Art. 20 of the DDA and Art. 27 of the DDO is kept in such a manner that requests from competent domestic authorities can be fully met within a reasonable period of time.

Implementation

591. In interviews with assessors, financial institutions stated that the necessary information is stored physically or digitally and can be made available in a timely manner.

Effective Implementation

592. Descriptions provided by FIs of the implementation of recordkeeping requirements lead assessors to believe that, in practice, this recommendation is being effectively implemented.

4.10. Wire Transfers (SR VII—rated NC in the 2007 MER)

4.10.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since the Last MER

593. In 2007, Liechtenstein implemented only few of the requirements of this Recommendation. The threshold for obtaining originator information was too high, and the type of originator information to be obtained was insufficient. Intermediary institutions were not subject to any obligations to ensure that originator information maintains with the wire transfer, and receiving institutions did not have an obligation to ensure that incoming wire transfers included full originator information. Originator information did not have to be provided at all for domestic wire transfers. Compliance monitoring for FIs/DNFBPs and sanctions for violations of the relevant provisions were not provided for. Since 2007, EC Regulation 1781/2006 of the European Parliament on Information on the Payer Accompanying Transfers of Funds has entered into force in Liechtenstein and comprehensively regulates wire transfers.

594. The Liechtenstein government has filed an application with the EFTA Surveillance Authority (ESA) for an authorisation which would imply that transfers of funds between Switzerland and Liechtenstein could be treated as domestic transfers under Regulation (EC) 1781/2006. This application has dissuasive effect until a final decision by ESA is taken. The ESA is still assessing the Liechtenstein application. Due to technical restrictions related to the interdependency of the Swiss and the Liechtenstein payment infrastructure (currency union) the FMA already accepts that wire transfers to Switzerland are treated like domestic wire transfers.

Legal Framework:

- Due Diligence Act;
- EC Regulation 1781/2006 of the European Parliament on Information on the Payer Accompanying Transfers of Funds ("The Regulation").

Obtain Originator Information for Wire Transfers (applying c. 5.2 and 5.3 in R.5, c.VII.1):

595. Rules pertaining to wire transfers are set out under Art. 12 of the DDA and Art. 17 of the DDO. National Liechtenstein law is complemented by the EC Regulation 1781/2006 of the European Parliament on Information on the Payer Accompanying Transfers of Funds ("The Regulation"), which has been taken over into the EEA Agreement apply to Liechtenstein is thus directly applicable in Liechtenstein, and to the Regulation's addressees without the need for further implementation through national law.

596. The authorities explained that the DDA was issued prior to the adoption of the EC Regulation into the EEA Agreement and thus contains provision to regulate wire transfers. These provisions would however not be relevant insofar as they are more general than the provisions of the EC Regulations and that the sanctions power by the FMA only extends to violations of the provisions of the EC Regulations on wire transfers, and not to violations of Art. 12 DDA. For sake of completeness, this section of the report still describes both the DDA and the Regulation provision.

597. The DDA grants the FMA sanctioning power for any violations of the requirements under the Regulation. The FMA's power to supervise persons subject to the law for compliance with the Regulation can thus be implied.

DDA/DDO:

598. Art. 12 of the DDA sets out a general requirement for payment service providers (PSPs) to "provide sufficient information on the payer accompanying transfers to funds." Art. 17 of the DDO further specifies the high level obligation in the law and provides that as a general principle, all money transfers have to be supplemented with the name, account number, and address of the payer. Where no account number is available, an identification number linked to the client, and payer has to be provided. The address may be replaced by the date and place of birth of the payer, his client number, or his national identity number. The obligation applies regardless of any threshold and equally to domestic and international transfers.

EC Regulation:

599. According to Art. 3, the Regulation applies to transfers of funds, in any currency, which are sent or received by a PSP established in the EU. This would mean that in Liechtenstein it would apply to banks and the postal service.

600. In line with the international standard, the scope of the Regulation does not extend to certain transfers of funds using a credit or debit card, electronic money, telephone or digital or other information technology devices, or transfer of funds between two PSPs acting on their own behalf.

601. Pursuant to Art. 5 of the Regulation, the payer's PSP has to ensure that transfers of funds are accompanied by complete information on the payer. Art. 4 defines "complete information" as consisting, in principle, of the name, address, and account number. The address may be substituted with the date and place of birth of the payer, a customer identification number, or national identity number. Where the payer does not have an account number, the PSP has to substitute it with a unique identifier which allows the transaction to be traced back to the payer.

602. Under Art. 5(2), before transferring the funds, the PSP has to verify the complete information on the payer on the basis of documents, data, or information obtained from a reliable and independent source. This provision does not apply where the value of the transfer is less than 1,000 euros, unless the transaction is carried out in several smaller transactions that appear to be linked.

603. Art. 5(3) of Regulation 1781/2006 states that, in the case of transfers of funds from an account, verification may be deemed to have taken place, if:

a. A payer's identity has been verified in connection with the opening of the account and the information obtained by this verification has been stored in accordance with the obligations set out in Arts. 8(2) and 30(a) of the Third EU Money Laundering Directive;

b. The payer falls within the scope of Art. 9(6) of the Third EU Money Laundering Directive (i.e., he or she is a customer who existed prior to the implementation of the Directive's provisions, but has been subject to verification on a risk-based approach).

Implementation

604. The FIs interviewed stated that they only process wire transfers on behalf of established customers. To that end, the FIs have access to the customer information. The FIs interviewed stated that they include all necessary information in wire transfers, domestic or cross-border, to include: originator name, address, and account number, as well as receiver name and other information. Representatives stated that their wire processing program will not allow for the transmittal of transfers lacking such information, which is also required for screening purposes.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2): Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):

DDA/DDO:

605. As indicated under criterion 1 above, as a general principle, full originator information has to be attached to each wire transfer, including domestic and cross-border transfers. However, an exemption exists in relation to wire transfers to other EEA member states or states deemed equivalent thereto on the basis of international treaties, only an account number of the payer or an identification number linked to the client that will enable the transaction to be traced back to the payer has to be provided. However, in such cases the payer's payment service provider has to be able to comply with a request for full originator information from the payee's payment service provider within three working days.

EC Regulation:

606. According to Art. 7(1) of the Regulation, transfers of funds where the payer's PSP is situated outside the European Union must be accompanied by complete information on the payer (as defined in Art. 4). Transfers from one European Union member state to another member state are not considered to be cross-border for the purposes of the Regulation, and, therefore, this provision does not apply in such circumstances. For the purposes of SR.VII, the FATF has recognised that transfers within the EU may be treated as domestic transactions, and therefore this limitation is not considered to be a deficiency in this case.

607. For batch files from a single payer, where the payee's PSP is outside the EU, Art. 7(2) provides that complete information should not be required for each individual transfer, if the full information accompanies the batch and each individual transfer has an account number or a unique identifier.

608. For transfers within the EU, the Regulation states that only the account number or the unique identifier allowing the transaction to be traced back to the payer should accompany the transfer, provided that complete payer information can be provided within three working days of a request from the payee service provider.

Implementation

609. As noted above, the financial institutions interviewed stated that they include all necessary information in wire transfers, domestic or cross-border, to include: originator name, address, account number, as well as receiver name and other information. Representatives stated that their wire processing program will not allow for the transmittal of transfers lacking such information, which is also required for screening purposes both at the Liechtenstein institution and at their correspondent institutions.

Maintenance of Originator Information ("Travel Rule") (c.VII.4):

DDA/DDO:

610. Art. 17 (3) and (4) require that PSPs receiving or processing a money transfer ensure that all originator information as required under paras. (1) and (2) of the same article are provided together and are retained with a money transfer when forwarded. In cases where a transfer does not include or only partially includes the required originator information, a payee's PSPs must either reject the transfer or request complete originator information from the payer's payment service provider.

611. The adaptation time for new payment systems has ended prior to the coming into effect of the DDA, thus the law does not provide for an exemption to take into account any technical limitations that may previously have existed.

EC Regulation:

612. Under Art. 12 of the Regulation, an intermediary PSP is required to ensure that all information received on the payer is maintained with the transfer.

613. According to Art. 13(1) and (2), an intermediary PSP inside the European Union, when receiving a transfer of funds from a payer's PSP outside the EU, may use a payment system with technical limitations (which prevent information on the payer from accompanying the transfer of funds) to send transfers of funds to the payment service provider of the payee. This provision applies, unless the intermediary PSP becomes aware that information on the payer required under this Regulation is missing or incomplete. In such circumstances, the intermediary PSP may only use a payment system with technical limitations if it is able to inform the payee's PSP of this fact, either within a messaging or payment system, or through another procedure, provided that the manner of communication is accepted by, or agreed between, both PSPs (Art. 13 (3)).

614. In cases where the intermediary PSP uses a payment system with technical limitations, the intermediary PSP has to make available to the payee's PSP, upon request, all the information on the payer which it has received, irrespective of whether it is complete or not, within three working days

of receiving that request (Art. 13(4)). The intermediary PSP has to keep records of all information received for five years (Art. 13(5)), as does the payee's PSP (Art. 11).

Implementation

615. As the FIs noted that they do not offer correspondent accounts, they do not act as intermediary FIs for wire transfers. Regardless of this, representatives stated that their wire processing program will not allow for the transmittal of transfers lacking such information, which would serve to ensure that all necessary information is maintained in a wire transfer.

Risk-Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):

EC Regulation:

616. Art. 8 of the Regulation requires the payee's PSP to have procedures for detecting whether the following information on the payer is missing:

- For transfers of funds where the payer's PSP is situated in the European Union, the information required under Art. 6 of the Regulation;

- For transfers of funds where the payer's PSP is situated outside the European Union, complete information on the payer as referred to in Art. 4, or where applicable, the information required under Art. 13 of the Regulation;

- For batch file transfers where the payer's PSP is situated outside the European Union, complete information on the payer as referred to in Art. 4 of the Regulation in the batch file transfer only, but not in the individual transfers bundled therein.

617. Art. 9 gives instructions on what to do if there is incomplete information. The recipient service provider should ask for the information or reject the payment. Under Art. 10, the payee's PSP has to consider missing or incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported to the authorities responsible for combating ML or FT, in this case, the FIU.

618. For a payer's PSP who regularly fails to provide information, the payee's PSP should (after giving warnings and setting deadlines) consider rejecting all transfers under Art. 9(2). Such termination should be reported. The fact that there is incomplete information is not itself a reason for reporting a transfer as suspicious or unusual per se.

Implementation

619. As discussed earlier, FIs stated that their policy prohibits processing wire transfers lacking the necessary information, this would include beneficiary FIs receiving wires and that their wire processing program will not allow for the transmittal of transfers lacking such information.

Monitoring of Implementation (c. VII.6):

620. According to Art. 15(3) of the Regulation, EU member states have to appoint competent authorities to effectively monitor, and take necessary measures with a view to ensuring, compliance with the requirements of the Regulation. The FMA has an implied power to supervise the implementation of the Regulation by persons subject to the law.

Application of Sanctions (c. VII.7: applying c.17.1–17.4):

621. Pursuant to Art. 31 of the DDA, the FMA may apply a sanction of up to CHF 100,000 in relation to anyone who in violation of Arts. 5–14 of EC Regulation 1781 fails to collect, keep, verify, or transmit the required information, carries out or receives transfers of funds, or breaches record keeping requirements or reporting duties. The FMA does not have sanctioning powers for breach of the DDA provisions relating to wire transfers.

Additional elements: elimination of thresholds (c. VII.8 and c. VII.9):

622. As indicated under criterion 4, all incoming wire transfers must be accompanied by complete originator information; else they have to be rejected by the Liechtenstein payment service provider. All relevant provisions under the DDA and DDO apply regardless of any thresholds, thus including in relation to outgoing cross-border transactions of less than EUR/USD 1000.

Effective Implementation

623. Program descriptions provided by FIs lead assessors to believe that, in practice, this recommendation is being effectively implemented.

4.10.2. Recommendations and Comments

Recommendation 10:

- Revise the legal framework to also require the keeping of business correspondence;
- Consider revising the legal framework to include an express power by the FMA or another competent authority to extend the record retention period;
- Revise the legal framework to ensure that transaction records are detailed enough to permit the reconstruction of individual transactions in all cases.

4.10.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• No express obligation to keep business correspondence; • No measures in place to ensure that transaction records permit the reconstruction of individual transactions in all cases.

SR.VII	**C**	

4.11. Monitoring of Transactions and Relationships (R.11 and 21) (R.11 rated PC in the third round MER)

4.11.1. Description and Analysis

Summary of the 2007 MER factors underlying the ratings and recommendation

624. The previous assessment found a deficiency in that the financial institutions were not explicitly required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.

Legal Framework:

- Art. 11 (6) DDA and
- Art. 20 DDA.

Special Attention to Complex, Unusual Large Transactions (c. 11.1):

625. The relevant provisions are now contained in Art. 11.6 DDA, explicitly imposing on all entities subject to the DDA enhanced due diligence not only for complex and unusually large transactions, but also complex structures, as well as transaction patterns that have no apparent or visible economic or lawful purpose. The requirement of enhanced due diligence for complex structures even goes beyond the R.11 standard.

Implementation

626. FIs stated that their monitoring procedures are sensitive to unusual transactions and complex transactions. Representatives generally described their policy to consider transactions as unusual where they fall outside the permitted parameters for a given client, or such transactions are flagged as otherwise inconsistent with the customer profile. Representatives stated that the transaction parameters are set according to their risk assessment of the customer. Some institutions noted that their procedures require all transactions over a certain value to be further investigated, in one example this threshold value provided was CHF 1 million. As described in discussions, the financial institutions' consideration of whether a transaction is "complex" generally refers to the complexity of the structure of the customer.

Examination of Complex and Unusual Transactions (c. 11.2):

627. Also pursuant to Art. 11(6) DDA, financial institutions are required to examine as far as possible the background and purpose of such transactions and establish a written record of their findings, which are at the disposal of the relevant competent authorities.

Implementation

628. FIs noted that their procedures require review of transactions flagged for being unusual, complex, or otherwise of concern. Representatives noted that additional steps might depend on the specific circumstances, but could include documented justification by the relationship manager, collection of additional documentation underlying the transaction (e.g. bill of sale), approval of an executive manager, or additional review and approval by a representative of the compliance function.

Record Keeping of Findings of Examination (c. 11.3):

629. Pursuant to Art. 20 DDA, financial institutions are required to document their compliance with the due diligence requirements (Arts. 5–16) in accordance with the DDA. For that purpose, they must keep and maintain due diligence files. Client-related records and receipts must be kept for at least ten years from the ending of the business relationship or conclusion of the occasional transaction. Transaction-related records and receipts must be kept for at least ten years from the conclusion of the transaction or from their preparation.

Implementation

630. The FIs interviewed stated that the details of an investigation, including documentation, are recorded and maintained. Some representatives described this information as being maintained as part of the customer file, while others described the information as being stored in a separate system, but similarly identified by the customer name and retrievable. FIs confirmed that their policy is to maintain this information for a minimum of ten years, as required.

Effective Implementation

631. Technically the authorities have addressed the third round criticism by literally transposing the R.11 criteria in Art. 11.6 of the DDA.

632. The effectiveness of this recommendation is undermined by deficiencies related to two main areas: (i) the identification of unusual or complex transactions, and (ii) investigation into such transactions. As noted above, criteria for determining whether a transaction is complex are generally limited to involvement of high risk jurisdictions or customers that are complex legal structures. Such transactions might be high risk, but would not necessarily be complex. Generally, neither the guidance issued nor the procedures implemented capture the indicators of complex transactions. Regarding investigations into such transactions, some interviews highlighted deficiencies related to the type and quality of supporting documentation obtained and the involvement of the compliance function.

4.12. Special Attention to Transactions from Some Countries (R 21—rated PC in the 2007 MER)

4.12.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since the Last MER

633. In 2007, Liechtenstein did not require its FIs/DNFBPs to pay special attention to business relationships and transactions with persons from or in high risk countries, and the mechanisms in place to ensure that its FIs/DNFBPs are informed about weaknesses in other country's AML/CFT regime were insufficient. The provisions have since been strengthened but only apply to persons in, and not from high risk countries.

Legal Framework:

- Due Diligence Act.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 and 21.1.1):

634. Art. 11(6) of the DDA provides that enhanced CDD and more intense monitoring needs to be applied to business relationships and transactions with contracting parties or beneficial owners in countries whose measures to combat ML or FT do not or do not sufficiently meet the international standard. The provision does not make reference to contracting parties or beneficial owners from (as opposed to in) such high risk countries. The authorities indicate that this was a deliberate choice of words, as they consider the international requirements on this point to target national AML/CFT systems, rather than individuals based on their nationality.

635. Unlike other business relationships or customers, such as for example PEPs or cross-border banking relationships, Art. 11(1) of the DDA does not require those prescribed under para. (6) to be treated as higher risk in all cases. At the same time, the wording of para. (6) is such that it sets out mandatory language "persons subject to due diligence must…." The authorities explained that it was indeed intended to make para. (6) a mandatory high risk scenario in all cases, and that Art. 11(1) should have referred also to para. (6) cases as having to be treated as high risk in all cases.

636. Pursuant to Art. 11(7) of the DDA, the government shall issue a list with countries that are considered to not or not sufficiently meet the international standard on AML/CFT are enumerated in Annex 2 of the DDO. At the time of the assessment, 15 countries were included on the list of high risk countries. The list closely reflects and is updated whenever there are changes to the list of countries identified in public statements by the FATF as jurisdictions with strategic AML/CFT deficiencies. In addition, the FMA advises FIs of concerns about weaknesses in the AML/CFT systems in the countries listed in the FATF document "Improving Global AML/CFT Compliance: On-going Process," which identifies jurisdictions with strategic AML/CFT deficiencies. FIs are required to consider the information contained in the document when assessing the adequacy of

measures and controls with respect to business relations and transactions with persons from or in those countries.

637. Updates of the list of countries enumerated in the Annex 2 of the DDO (corresponding to those mentioned in the FATF public statement) as well as the list of countries mentioned in the FATF document "Improving Global AML/CFT Compliance" are communicated via newsletters and the FMA website to ensure that FIs are appropriately and timely informed.

Implementation

638. FIs stated that their criteria for assessment of customer risk include country risk, related to both domicile and nationality. Representatives described the development of their country risk profiles as incorporating multiple factors, including the FATF list of countries not sufficiently applying the recommendations, generally in response to the list being published by the FMA. As described, other factors include information provided by the Corruption Percentage Index and Transparency International. As discussed earlier in the report, institutions noted that country risk informs their assessment of customer risk level, which in turn determines the level of due diligence applied to the customer. Also, representatives described country risk as informing the risk perception of specific transactions.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

639. For all transactions provided under Art. 11(6) DDA as described above, the background and purpose has to be clarified and recorded in writing, regardless of whether the transaction has an apparent economic or legal purpose or not. Records obtained pursuant to Art. 11(6) DDA are considered transaction-related records under Art. 20 of the DDA and must thus be maintained in such a manner that requests from competent authorities can be complied with within a reasonable period of time.

Implementation

640. The FIs interviewed stated that their monitoring procedures include criteria to flag transactions with no apparent economic or lawful purpose, regardless of the country implicated. Regarding such cases, representatives noted that similar investigation procedures would be employed as described earlier.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

641. Art. 11(7) of the DDA grants the government of Liechtenstein the power to impose notification requirements for business relationships and transactions with contracting parties or beneficial owners from or in countries permanently included on the list of high risk jurisdictions. Apart from such notification requirements, no other provisions are in place that would grant the government or any authority in Liechtenstein to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries.

Effective Implementation

642. As noted throughout this report, FIs in Liechtenstein are heavily reliant on country lists to develop risk indicators, which give significant weight to jurisdictional risk as well as the FATF list of countries not sufficiently applying the recommendations. Interviews with the financial sector demonstrated that they generally understand jurisdictional risks and are aware of and utilise the relevant lists of higher-risk countries.

4.12.2. Recommendations and Comments

Recommendation 11:

- Consider further clarifying what types of transactions might be considered "complex;"
- Consider requiring an FI's compliance function to approve transactions requiring investigation or clarification;
- Consider requiring incoming transactions incongruent with the customer profile be frozen until investigated and cleared; and
- Consider requiring documenting all transactions and associated clarifications with the customer profile, or, if maintained in a separate system, referenced in the customer profile and immediately accessible.

Recommendation 21:

- Art. 11(6) of the DDA should be further revised to require enhanced CDD not only with respect to persons in but also to persons from high risk countries;
- Ensure that FIs understand the obligation to carry out enhanced CDD under Art. 11(6) of the DDA as mandatory; and
- Grant the government or any authority in Liechtenstein a broader power to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries.

4.12.3. Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**LC**	• Lack of clear guidance and criteria pertaining to complex transactions; • Issues of effectiveness.
R.21	**LC**	• Art. 11(6) of the DDA does not require enhanced CDD with respect to persons from (as opposed to in) high risk countries;

		• No sufficiently broad power to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries.

4.13. Suspicious Transaction Reports and Other Reporting (R.13-14 and SR.IV)

Suspicious Transaction Reports (R.13 & SR.IV—rated PC in the 2007 MER)

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since the Last MER

643. In the previous assessment report the assessors determined that attempted occasional transactions were not covered by the SAR reporting requirement and funds linked to terrorism, terrorist acts, or terrorist organisations were not subject to reporting. Weaknesses in the efficiency and effectiveness of the reporting system were also identified.

644. In the intervening period of time, a number of measures have been undertaken by the authorities to increase the effectiveness of the reporting system. The FIU was given the power to allow certain transactions to be carried out within the five-day freezing period which automatically applies upon the submission of a SAR.

4.13.1. Description and Analysis

Legal Framework:

- Law of December 11, 2008 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing (DDA);
- Ordinance of February 17, 2009 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing (DDO);
- Law of November 24, 2006 against Market Abuse in Trading of Financing Instruments (MAA); and
- Guideline for submitting reports to the FIU issued on April 1, 2013 (FIU Guideline).

Requirement to Make STRs on ML to FIU (c. 13.1 and IV.1):

645. Where a suspicion of ML, a predicate offense of ML, organised crime, or FT exists, FIs are required to immediately report in writing to the FIU (Art. 17 of the DDA).

646. The reporting requirement is a direct mandatory obligation and is based on a subjective test of suspicion. The objective test, which requires reporting where there are reasonable grounds to suspect the occurrence of criminal activity, does not apply.

647. Art. 17 of the DDA appears to provide for a wider reporting requirement than the obligation stipulated under criterion 13.1. Whereas criterion 13.1 requires reporting when there is a suspicion

that funds are the proceeds of a criminal activity, in theory, Art. 17 of the DDA is broader, in that it requires FIs to report a suspicion of ML, a predicate offense (criminal activity), organised crime, and FT even where no funds are involved. The FIU referred to a number of cases where a SAR was submitted even in the absence of funds. For instance, reference was made to cases where a bank rejects a customer as a result of adverse information found on the internet. In these cases, a report is filed even though no funds are involved.

648. The obligation to report under criterion 13.1 must at a minimum apply to funds that are proceeds of all offenses that are required to be included as predicate offenses under R.1. Since all the predicate offences required under the standards are covered this criterion is met.

649. Art. 18(1) of the DDA requires reporting entities to refrain from executing any transactions which they know or suspect to be related to money laundering, predicate offenses of money laundering, organised crime, or terrorist financing and report to the FIU. Where to refrain in such a manner is impossible or would frustrate efforts to pursue the suspected person, the reporting entity is required to submit a report to the FIU immediately after the transaction is executed.

650. Where the conditions for submitting a report apply, reporting entities are not permitted to terminate the business relationship with the customer concerned. Furthermore, reporting entities are required to refrain from all actions that might obstruct or interfere with any orders pursuant to Article 97a of the Criminal Code for a period not exceeding five days from the receipt by the FIU of the SAR, unless the FIU approves such actions in writing before the expiry of the five day period or until an order from the responsible prosecution authority is served on the financial institution.

STRs Related to Terrorism and its Financing (c. 13.2 and IV.1):

651. Art. 17 requires FIs to report in writing to the FIU when, inter alia, a suspicion of financing of terrorism and predicate offenses exists The reference to predicate offenses covers all the circumstances covered under this criterion since terrorist acts and organisations are criminal acts and predicate offense to ML in Liechtenstein.

No Reporting Threshold for STRs and Attempted Transactions (c. 13.3):

652. All suspicious transactions must be reported to the FIU irrespective of any the amount involved.

653. As mentioned earlier, Art. 18, para. 1 of the DDA prohibits FIs from executing any transactions which they know or suspect to be related to ML, predicate offenses of ML, organised crime, or terrorist financing. Additionally, such transactions must be reported pursuant to the general requirement under Art. 17 of the DDA. A combined reading of these two articles appears to sufficiently cover the requirement to report attempted transactions.

654. Furthermore, the FIU Guideline states that the obligation to report also exists if a business relationship has not yet been established or if the transaction has not yet been executed. As a minimum precondition for the reporting obligation to arise, the person subject to due diligence must

know of details regarding the business relationship or transaction that has not come into being, where such details have a certain quality with a view to a report.

Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

655. The reporting requirement does not contain any restrictions relating to tax matters.

Additional Element—Reporting of All Criminal Acts (c. 13.5):

656. FIs are required to report to the FIU when a suspicion that any criminal activity which constitutes a predicate offense domestically exists. Classification as an offense committed in Liechtenstein requires that the act is also considered a predicate offense under Liechtenstein law, even if the punishable act is considered a predicate offense only in Liechtenstein.

Effective Implementation

657. All FIs interviewed were aware of their reporting obligation. Nevertheless, the assessors were not convinced that the level of understanding of the implementation of such obligation is sufficiently adequate. This is of particular relevance within the context of the specific risks that Liechtenstein faces in view of the nature of the business that is conducted. As stated elsewhere in the report, the business conducted in and from Liechtenstein involves all the categories of customers, business relationships, and transactions which are given as examples under criterion 5.8 of the FATF Methodology 2004 as potentially posing a higher risk of ML/FT. This includes nonresident customers, private banking, legal persons, or arrangements such as trusts that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form. During the interviews with FIs, it was noted that some FIs did not appear to appreciate the extent of the risk which is inherent in their business to an appropriate degree. Consequently, the nature of the reports submitted to the FIU by some institutions do not always reflect the type of activities that are expected to raise suspicion and be reported within the context of the particular business.

658. As evident from Table 17 below, the main contributor of ML disclosures within the Liechtenstein financial sphere is the banking sector, which is the main component of the financial sector in Liechtenstein. This has been consistently the case since the FIU was set up. The average number of reports submitted by the banking sector every year is 122. Compared to the period covered in the third MER, a considerable increase in the submission of SARs can be noted. In 2010 and 2012, the FIU registered a record number of SARs submitted by banks with 213 SARs and 199 SARs respectively. The majority of the 17 banks report at least one SAR per year. The few banks (on average not more than three banks per year) which do not frequently submit SARs are either very small institutions or banks with only a restricted license. Reporting by other FIs, except to some extent insurance companies is virtually negligible. The postal service, which is the only money service business in Liechtenstein and acts as an agent for a money service business licensed in another EU country, has since the beginning of 2013 started reporting SARs to the FIU directly. Previously, the FIU received SARs from the central office of the principal money service business situated in another EU country on transactions conducted through the postal service (the agent) in Liechtenstein. These were not categorised as SARs for statistical purposes.

	2008	2009	2010	2011	2012	Jan.-Jun. 21, 2013
Banks	136	116	210	126	199	68
Insurers	9	9	14	37	28	11
Insurance Mediators	0	0	0	0	1	0
Postal Service	N/A	N/A	N/A	N/A	N/A	15
Investment undertakings	0	1	1	0	0	0
Asset Management Companies	0	0	0	1	3	0

659. In terms of volume of reporting, the FIU indicated that overall it was satisfied with the level of reporting by each type of FI. It is the view of the FIU that the number of SARs filed by each sector corresponds to the market share the sector holds within the financial industry. The assessors agree that the banking sector is indeed the dominant player in Liechtenstein and therefore it follows that the highest number of SARs derives from banks. It appears that the number of SARs submitted by the insurance sector is commensurate to its size. Additionally, investment undertaking and asset management companies are largely exempted from the scope of application of the DDA (as explained under R.5. However, it is the view of the assessors that the number of SARs reported by banks could be limited as a consequence of two factors. As mentioned under criterion 26.5, the FIU is required to disseminate the SAR itself to the OPP when it substantiates a suspicion of ML/FT. This could serve as a deterrent to reporting, since the identity of the reporting entity is exposed to law enforcement authorities and potentially the suspect in the course of the investigation. Additionally, as stated previously not every banks' understanding of their reporting obligation is sufficiently adequate.

660. The FIU classifies SARs according to whether a SAR is submitted pursuant to the internal compliance procedures of the reporting entity, as a result of knowledge gained by the reporting entity pursuant to international requests for mutual legal assistance and in those cases where the suspicion originated from independent domestic proceedings. The statistics indicate that since the last evaluation, SARs by FIs have been predominantly filed as a result of internal compliance procedures. According to the FIU, this demonstrates that customer due diligence measures applied by FIs, especially banks, are being implemented effectively. This view is not entirely shared by the assessors as explained below.

661. During the onsite mission, the assessors sought to determine the reasons which triggered the submission of SARs through the internal compliance procedures of FIs. It was noted that in the vast majority of cases, a suspicion is triggered by negative information on the customer or prospective customer obtained either through the media or via checks conducted on commercial intelligence databases. This was also confirmed through sample testing carried out on sanitised case files at the

FIU premises. FIs are to be commended for having mechanisms in place which enable them to gather such information. Nevertheless, almost none of the FIs interviewed recounted having identified any suspicions through, for example, the scrutiny of transactions patterns of the customer or other unusual activities or due to the suspicious behavior or activities of the customer. Although systems to flag transactions which deviate from the business and risk profile of the customer are in place in all FIs, the alerts generated by these systems have hardly ever resulted in the submission of an SAR. This could possibly indicate that insufficient consideration is given to alerts generated through ongoing monitoring mechanisms. In addition, as mentioned under Recommendation 5, FIs do not always receive adequate information to create a meaningful business and risk profile of the customer, in the context of introduced business. As a result, the FI would not be in a position to compare the activities to the profile of the customer and identify suspicious transactions and activities through its ongoing monitoring procedures. Overall, it appeared that most FIs understanding of the reporting requirement is not as yet developed to an acceptable degree. Some FIs still operate under the assumption that suspicions arise where information clearly indicating a link between the customer and a particular criminal activity exists.

662. In the discussions with the FIU on this issue, the FIU stated that it had not as yet conducted an assessment to determine the extent to which reports were submitted solely as a result of negative information on the customer. The FIU pointed out that measure had already been taken with a view to improving the reporting regime. For instance, the list of indicators that may indicate suspicious activity was elevated from guidance issued by the FMA to an annex in the DDO, giving it the force of law. However, the FIU indicated that the matter will be considered in further detail in the near future. A process had already been set in motion whereby regular meetings were held with banks on an individual basis to discuss issues relating to reporting.

663. The FIU Guideline on reporting issued in April 2013 will definitely serve as an important tool in increasing FIs' awareness and understanding of the reporting mechanism. This is especially the case, since the Guideline contains clear explanations on the identification of suspicions through ongoing monitoring. Most FIs appeared to be satisfied with the contents of the Guideline and appreciate the efforts of the FIU in this respect. Before the Guideline was issued, a consultation process was conducted to gather comments and feedback from financial and nonfinancial reporting entities. The private sector feedback was integrated in the final version that was issued. Since the Guideline was issued only a few months before the onsite mission, the assessors could not determine whether it had had any major impact on the effectiveness of the reporting regime.

664. The FIU Guideline provides practical guidance on reporting. The Guideline emphasises the fact that the reporting requirement is not subject to any special preconditions, such as the existence of a justified suspicion. It also clarifies that reporting entities should not refrain from reporting, for instance, simply because a clear link cannot be established between the customer's account and a particular criminal activity.

665. Guidance is also provided on the conditions that trigger the reporting obligation. The identification of suspicions hinges upon the adequate monitoring of business relationships. A list of indicators of ML, predicate offenses of ML, organised crime, and FT are included in an annex to the DDO. The existence of such indicators is not intended to automatically trigger a reporting requirement but to alert the FI to obtain further clarifications from the customer.

666. Other important factors in the formulation of a suspicion are mentioned in the Guideline which ensures that FIs have access to clear and precise instructions on this sensitive matter. For instance, the Guideline underlines the fact that the obligation to report arises even where the FI is not in a position to identify the specific predicate offense generating the assets. Attention is drawn to the fact that the obligation to report is triggered if there is an objective reason to assume the existence of a suspicion, even if the FI subjectively believes that the contracting party is not at fault. Moreover, it is pointed out that the obligation to report arises even if a business relationship has not yet been established or a transaction has not yet been executed and a suggestion of the minimum information that is to be submitted to the FIU in such situations is provided. A brief description of what constitutes ML, FT, predicate offenses, and organised crime is also included.

667. The Guideline helpfully sheds some light on the issue of the timing of submission of the SAR following the formation of a suspicion. Although, the guidelines explain that no general timeframe can be provided as each case must be decided on a case by case basis, there must be no delays (e.g. due to the holiday absence of an employee). As a rule, reporting in the case of ongoing business relationships occurs right after the clarifications pursuant to Art. 9 of the DDA. However, as soon as a suspicion exists, the report must be submitted, even if in the individual case the special clarifications have not yet been concluded. The FI must design its internal organisation in such a way that the decision to report can be made immediately by the competent organ within the institution. During discussions at the onsite mission, the FIU remarked that it had never come across cases where the submission of a SAR had been delayed by an FI.

668. As noted under criterion 13.1, following the submission of a SAR, FIs are not permitted to carry out any actions that might obstruct or interfere with any freezing orders issued in terms of Art. 97a of the Criminal Code for a period of five business days. This could potentially result in the customer's account(s) being frozen for five business days. This obligation came under criticism in the Third Round Evaluation since it was considered to potentially undermine the effectiveness of the reporting system and lead to tipping off. The assessors had noted that it is likely, in practice, to increase the suspicion threshold as FIs seek to avoid the burden of the freezing provision and only report where they have sufficient information indicating the existence of a criminal activity. In order to address this issue, following the third evaluation, Art. 18(2) of the DDA was amended to empower the FIU to approve a transaction before the expiry of the freezing period. This was done to avoid situations in which the reported customer would be alerted of the fact that a SAR had been submitted. Notwithstanding this adjustment to the freezing mechanism, the assessors retain the concerns raised in the Third Round. The FIs interviewed were almost unanimous in expressing a strong preference for the removal of such a mechanism, since in their view it complicated the reporting regime unnecessarily.

669. The FIU has received five SARs on FT in the period under review. It has never carried out a formal assessment to determine whether, the volume of reporting is adequate in the light of the risk of FT in Liechtenstein. However, since none of the cases indicated that Liechtenstein played a role in FT, the authorities believe that they are justified in considering the risk of FT to be minimal and the number of FT reports to be adequate.

670. The FIU provided a sanitised version of one of the reported FT cases which demonstrates that financial institutions' understanding of the requirement is broad enough to cover all the criteria under

R.13 and SR.IV. In the particular case referred to by the FIU, a transfer of funds was made through a bank account in Liechtenstein by a Liechtenstein foundation whose nonresident beneficial owner was a sympathiser of an extremist group situated in an EU country. The funds were transferred to a lawyer who was representing a member of the extremist group in court proceedings on a count of terrorism. The beneficial owner's and lawyer's links to the terrorist group were identified by the bank through media reports prompting the submission of the SAR. The FIU explained that the funds that were transferred by the foundation were neither directly linked to a terrorist act nor to a terrorist group. This did not, however, inhibit the bank from submitting a report on a suspicion of FT. Following an analysis by the FIU, the report was sent to Public Prosecutor who forwarded the information to the prosecutorial authorities in the EU country where the person was being prosecuted. The accounts of the foundation in Liechtenstein are currently frozen pending the outcome of the case in the EU country.

4.14. Tipping-off/protection from civil and criminal liability (R.14—rated PC in the 2007 MER)

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since the Last MER

671. The rating in the 2007 MER was based on two deficiencies. The tipping-off provision only applied for a maximum of 20 days and directors, officers and employees were not explicitly covered by the tipping-off prohibition.

672. The tipping-off prohibition now applies indefinitely.

4.14.1. Description and Analysis

Legal Framework:

- Law of December 11, 2008 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing (DDA).

Protection for Making STRs (c. 14.1):

673. Art. 19 of the DDA protects persons subject to the law and their general managers or employees from any civil or criminal liability if they have reported a SAR to the FIU and it later turns out that the report was not justified, provided the person did not act willfully.

674. During the onsite mission, it was pointed out that Art. 19 is not entirely in line with c. 14.1 since the latter refers to exemption from liability when a report is submitted in good faith. The FIU explained that the German translation of the word "willfully" is more akin to the good faith principle. Under the German text, a reporting entity would not be held civilly or criminally liable, unless the person knew that the report was not warranted and acted in bad faith.

Prohibition Against Tipping-Off (c*. 14.2):*

675. Pursuant to Art. 18, para. 3 of the DDA, persons subject to the law may not inform the contracting party, beneficial owner or third party that they have submitted a SAR to the FIU pursuant to Art. 17 of the DDA. This provision does not cover directors, officers, and employees (permanent or temporary) as required under c.14.2. The authorities explained that Art. 18, para. 3 is interpreted by all practitioners to also include directors, officers, and employees. This was confirmed by a court judgment where the director of a trustee company that had submitted a SAR was fined CHF 7,500 for having disclosed to a third party that a SAR had been submitted to the FIU. However, the prohibition only applies to the SAR and not to related information as required by Criterion 14.2.

676. The tipping-off prohibition is subject to a number of exemptions. The FMA may be informed by the reporting entity of the submission of a SAR.

677. Art. 18, para. 4 further permits communication on SARs between:

a) institutions belonging to the same group within the meaning of Art. 5, para. 1 (n) of the Financial Conglomerates Act subject to Directive 2005/60/EC or equivalent regulation;

b) persons subject to due diligence as referred to in Art. 3, paras. 1(k), (m), and (n) as well as external accountants and auditors within the meaning of Art. 3, para. 1(u) subject to Directive 2005/60/EC or equivalent regulation, provided they carry out their professional activity as self-employed persons or as employed persons within the same legal person or within a network. A network means a comprehensive structure to which the person belongs and which has a joint owner or joint man-agreement or joint control in regard to compliance with the provisions of this Act;

c) persons subject to due diligence as referred to in Art. 3, para. 1(a)–(i), (k), (m), and (n) as well as external accountants and auditors within the meaning of Art. 3, para. 1(u) subject to Directive 2005/60/EC or equivalent regulation, provided they are involved in the same fact pattern and are subject to equivalent obligations in regard to professional secrecy and the protection of personal data. The exchanged information may be used exclusively to combat money laundering and terrorist financing**.**

678. The FMA shall establish a list of countries with equivalent regulations.

Additional Element—Confidentiality of Reporting Staff (c. 14.3):

679. In terms of Art. 10 of the FIU law the obligation to release information in accordance with the Public Information Act does not extend to the origin of the data and the recipients of transmissions. Pursuant to Art. 5, para. lett. b), the FIU is required to submit a copy of the SAR to the Office of the Public Prosecutor. However, the names and personal details of the staff of the FI are not contained within the reporting form.

Statistics (R.32)

680. The FIU maintains statistics on the number of SARs received, including a breakdown of the type of financial institution making the SAR.

4.14.2. Recommendations and Comments

Recommendation 13 and Special Recommendation IV

- The FIU should continue to undertake a thorough analysis of banks' level of reporting to identify concretely which issues inhibit reporting and, where necessary, implement targeted measures to resolve these issues. The FIU should also continue organising awareness raising activities, which are already an integral part of the FIU's activities, as a matter of priority to further enhance the reporting regime;

- Banks' reporting patterns should be subject to greater attention by the FIU to determine to what extent banks submit SARs only when information gathered from public sources indicates that a customer may have been involved in criminal activities. The assessors encourage the FIU to continue holding meetings with banks on an individual basis to discuss issues relating to reporting. Special emphasis should be made on the identification of suspicious activities or transactions that are not necessarily linked, either directly or indirectly, to a particular criminal activity;

- The FIU should review the automatic freezing mechanism which applies upon the submission of a SAR. The review should include extensive consultation with all reporting entities. This review should inform the FIU on how the relevant legal provisions are to be amended;

- The FIU should consider conducting a formal assessment to determine whether the reporting of FT suspicions should be higher; and

- The FIU should consider maintaining statistics on the number of reported SARs related to a suspicious transaction which is to be executed. This would enable the FIU to determine the extent to which Art. 18, para. 1 of the DDA is being complied with.

Recommendation 14

- Art. 18, para. 3 of the DDA should be amended to extend the tipping off prohibition to person's directors, officers and employees (permanent or temporary) of a reporting entity as required under c.14.2. Additionally, the prohibition should explicitly apply not only to the SAR but also to related information.

4.14.3. Compliance with Recommendations 13, 14, and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**LC**	**Effectiveness** • The automatic five-day freeze on filing a SAR may have an adverse effect on the reporting mechanism; • Requirement to submit SARs to the OPP by the FIU hinders the effectiveness of the reporting obligation, as it exposes the reporting entity that has filed the SAR; • Inadequate understanding of the reporting requirement by some financial institutions.
R.14	**LC**	• The tipping-off prohibition does not apply to information related to a SAR.
SR.IV	**LC**	**Effectiveness** • Inadequate understanding of the reporting requirement by some FIs.

4.15. Foreign Branches (R. 22—rated PC in the 2007 MER)

4.15.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since Last MER

681. In 2007, Liechtenstein law did not require FIs to ensure that their foreign branches and subsidiaries observe the higher AML/CFT standards when home and host country requirements differed, or oblige FIs other than banks to inform the FMA in cases where this was not possible under the laws of the host country. While specific provisions have been integrated in the DDA to address this issue, they are limited in scope to branches and subsidiaries in non-EEA countries.

Legal Framework:

- Due Diligence Act;
- Due Diligence Ordinance.

Application of AML/CFT Measures to Foreign Branches and Subsidiaries (c. 22.1, 22.1.1 and 22.1.2):

682. Art. 16 of the DDA and Art. 25 of the DDO regulate the application of Liechtenstein's AML/CFT regime to subsidiaries and branches of domestic financial institutions in any foreign country.

683. Art. 16(1) of the DDA provides that FIs must ensure that their foreign branches and majority owned subsidiaries apply measures to combat money laundering, organised crime, and terrorist

financing that are at least equivalent to those laid down in this Act, to the extent permitted under the foreign law. According to the provision, special attention must be paid to ensuring compliance with this obligation in relation to countries who do not or only insufficiently apply the international standard implementation.

684. The FIs interviewed stated that they have policies in place to ensure that their foreign branches and subsidiaries observe, at a minimum, the compliance policies in accordance with the Liechtenstein framework. In cases where there are discrepancies between local and host country obligations, representatives stated that the more stringent obligations must apply. FIs noted that group-wide policies are developed and approved by the board, and that the Liechtenstein headquarters must review and approve the individual policies of each branch and subsidiary.

Requirement to Inform Home Country Supervisor if Foreign Branches and Subsidiaries are Unable Implement AML/CFT Measures (c. 22.2):

685. In case a financial institution is not in a position to comply with its obligation under Art. 16(1) based on limitations of the law of the foreign country, Art. 16(2) imposes a requirement on the domestic institution to inform the FMA accordingly and to take additional measures to effectively address and mitigate the increased risk. No additional guidance was provided to FIs as to what such measures could be.

Implementation

686. The representatives interviewed stated that institutional policy would require the institution to report in the cases where branches or subsidiaries are unable to implement the necessary measures.

Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):

687. Pursuant to Art. 16(3) of the DDA banks with branches abroad or that lead a financial group with foreign companies must, at a global level, assess, limit, and monitor their risks connected with money laundering, organised crime, and the financing of terrorism. Further requirements are provided by Art. 25 of the DDO.

Implementation

688. The FIs interviewed noted that they do not consider clients across jurisdictions. Industry representatives asserted that customers of foreign branches that wish to establish a relationship with the branch in Liechtenstein would be subject to the local due diligence procedures.

Effective Implementation

689. Program descriptions provided through interviews with the few FIs that hold foreign branches or subsidiaries lead assessors to believe that, in practice, this recommendation is being effectively implemented.

4.15.2. Recommendations and Comments

- Provide guidance to FIs to clarify what additional measures could be taken in cases where a foreign branch or subsidiary is not in a position to comply with the DDA provisions.

4.15.3. Compliance with Recommendation 22

	Rating	Summary of factors underlying rating
R.22	**C**	

4.16. The Supervisory and Oversight System—Competent Authorities and SROs. Role, Functions, Duties, and Powers (Including Sanctions) (R. 23, 29, & 17)

4.16.1. Description and Analysis

Summary of 2007 MER factors underlying ratings and recommendations and progress since the last report

690. The MER rated Recommendation 23 as Compliant. Recommendation 17 was rated as Partially Compliant. Recommendation 29 was rated Largely Compliant. The following recommendations were made:

- The FMA should introduce a requirement that FIs should apply measures, consistent with FATF Guidelines across financial groups;
- Enlarge the definition of administrative offenses to cover all appropriate DDA requirements and establish a continuum of sanctions from minor to serious DDA violations to ensure that cases are processed in a timely, effective, and proportionate manner;
- Define sanctions with regard to criminal liability of legal persons; and
- Consider providing additional resources to allow FMA supervision staff to participate directly in the AML/CFT on-site inspection program.

691. It is important to note that progress has been made with respect to these recommendations as follows:

- Art. 16 of the DDA requires the applications of Lichtenstein AML/CFT due diligence standards to foreign branches and subsidiaries;
- The DDA has been amended to rectify the gaps in the application of administrative sanctions;
- The Penal Code has been amended to clarify that the legal entity is legally liable along with the individual who is responsible for a breach of the regulatory provisions;

- Staff have been increased from 29 at the time of the MER to 75 at the time of the current evaluation (with insurance receiving the largest increase); and
- FMA staff have conducted their own on-site inspections and accompanied audit firms on onsite inspections.

Legal Framework

- Financial Market Authority Act 2004 (FMAA);
- Due Diligence Act 2008 (DDA);
- Due Diligence Ordnance (DDO);
- Banking Act 1992 (BA);
- Insurance Supervision Act 1995 (ISA);
- Investment Undertakings Act 2005 (IUA);
- Asset Management Act 2005 (AMA);
- E-Money Institutions Act 2011 (EIA);
- Public Enterprise Act, Article 23;
- Data Protection Act.

Competent authorities—powers and resources: *Designation of Competent Authority (c. 23.2); Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 and 29.3.1); Adequacy of Resources—Supervisory Authorities (R.30).*

Competent authority, powers, and resources

The competent authorities and SROs, and their roles, functions and duties in regulating the application of AML/CFT measures in the financial system, their organisational structures and resources (R.23, R.30—in particular criteria 23.1, 23.2, 30.1–30.3).

The roles, functions and duties of the supervisory authority (c 23.1)

692. The FMA is established by the FMA Act (FMAA) which came into force on January 1, 2005. The FMA is an independent, integrated supervisor which is responsible for overseeing the financial market in Liechtenstein with the aim of safeguarding financial center stability, protecting customers, and preventing abuses. Its responsibilities include supervising the AML/CFT obligations of all FIs and DNFBPs. The FMA is responsible for supervision and execution of the FMA Act and of a substantial range of financial sector laws that are relevant to FIs and

transactions and to DNFBPs. The Acts for whose implementation the FMA is responsible are listed in Art. 5 of the FMAA and include (the list below is not exhaustive):

- The DDA;
- The ISA;
- The Banking Act;
- The PTA;
- The AMA;
- The IMA;
- The EIA;
- The UCITS Act.

Designation of Competent Authority (c. 23.2)

693. The DDA imposes obligations on FIs to take due diligence measures. Art. 23 states that the FMA is responsible for the execution of the Act. The laws relating to the supervision of specific financial sectors also stipulate that the FMA is responsible for implementation. The FMAA states that the FMA shall be independent in the exercise of its activities and shall not be bound by any instructions. Its budget is approved by the Parliament of Liechtenstein and, as noted below, almost half of the budget is in the form of a direct contribution from the state. However, this has not prevented the FMA from increasing its resources very rapidly from CHF 6.6 million in 2006 to CHF 19.32 million in 2012. The assessors found no indication that the FMA was inhibited in carrying out its functions by any limitation on its independence. However, the assessors concluded that the practice of using mandated audit firms for much of the onsite inspection work could compromise the independence of that inspection function. This is discussed more fully in the description of the onsite inspection process below.

694. As a member state of the EEA, Liechtenstein must implement in its legislation all relevant EU Directives including those relating to ML and FT. Relevant EU Regulations are directly applicable in Liechtenstein, once incorporated into EEA Agreements.

Organisation and resources—Supervisory Authorities (R.30—in particular criteria 30.1–30.3)

695. The FMA is funded by a direct contribution from the state (49 percent) and the remainder covered by supervisory levies, fees, and services. The amount of the government grant is established in primary legislation. The FMA's annual budget is approved by the government (Art. 33a, FMA). The fees and supervisory levies are set by the FMA within parameters and overall limits established in the FMAA.

696. The Board of Directors has three to five members who, between them, must have competence in banking, securities trading, insurance, and fiduciary (and other) services. They are required to possess an impeccable reputation, expertise and practical experience (Art. 7 FMAA). The Executive Board of the FMAA is appointed by the Board of Directors and its members must also have an impeccable reputation, expertise, and practical experience.

697. The requirements for other staff are covered by the Staff Regulation, except for the confidentiality requirement, which is in Art. 23 of the Public Enterprise Act. This provision states that employees shall keep information confidential when they obtain it in the course of their duties and confidentiality is in the interests of the FMA, or the state, or predominantly in the private interest. The Act gives no indication of which of these interests is to be given priority in what circumstances, nor does it state who is to judge which interests are affected or the consequences of failing to observe this provision. Art. 3 of the Act states that this provision does not apply where there is other relevant legislation. A discussion of how this provision is to be interpreted in the context of cooperation is at Recommendation 40.

698. The FMA is organised into four supervision divisions: Banking Division, Insurance and Pensions Division, Securities Division, and Other Financial Intermediaries Division. The names are self-explanatory except that "Other Financial Intermediaries" includes the licensing and AML/CFT supervision of professional trustees and trust companies, auditors and audit companies, lawyers and law firms, exchange offices, real estate brokers, dealers in goods and services, and other persons subject to due diligence. There is no prudential supervision of these groups. Representatives of each division together with two representatives from the Executive Office form an AML/CFT Committee to review and assess AML/CFT risks and to form the basis of the FMA's understanding and application of international standards in the context of Liechtenstein.

699. Total staff employed within the FMA was 72.5 full-time equivalents at the end of 2012 (75.6 at the time of the evaluation). This compares with 29 staff (plus eight trainees) at the time of the 2007 MER.

Number of positions approved in the four main supervisory divisions since 2007.

	2008	2009	2010	2011	2012
Banking	22.1	32.1	8.1	10.1	**10.6**
Securities			11.6	12.8	12.8
Insurance and Pensions	12	14	14	14.9	14.3
DNFBPs	8.8	11.9	11.0	11.6	12.3
Total Supervision	42.9	58	44.7	49.4	50

Source: FMA

700. The data shows that a substantial increase in staff over the period. The number of front line supervisory staff has doubled.

701. The FMA supplied data relating to staff turnover, which shows that it is typically between 17 percent and 20 percent with voluntary turnover between 12 percent and 14 percent.

702. The FMA also noted that there was a spike in turnover in 2010 which arose from a reorganisation of the FMA supervision divisions which resulted in the creation of separate securities and banking divisions.

703. FMA staff receive training in AML/CFT matters annually either in the form of internal or external training. As regards internal training, the FMA AML/CFT Committee plays an important role in providing AML/CFT expertise to FMA staff. Recent cases and technical questions related to the application of the regulatory framework are discussed within this committee. Conclusions are shared throughout the FMA through the committee's weekly minutes. The committee also serves as a platform for updating FMA staff on the work of the international standard setters and bodies in the area of AML/CFT.

704. Many FMA employees formerly worked with local or foreign FIs or trust companies. Their industry expertise is an important contribution to the quality of the supervisory work carried out.

705. The FMA observe that several employees pursue postgraduate studies in company law, tax law, banking and financial management, and other areas which touch upon AML/CFT issues.

706. FMA staff also benefit from the experience and know-how shared amongst EU supervisory authorities in the framework of cooperation at EU level (in particular within the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) and the ESA's Subcommittee on Anti-Money Laundering (AMLC).

707. The FMA has responded to the recommendations of the previous MER by increasing staff substantially.

708. Within the supervisory divisions, the allocation of resources does not appear to reflect AML/CFT risk (although it is understood that other factors will affect resources allocation). The authorities have rightly pointed out that the previous MER referred to an assessment of compliance with Insurance Core Principles that had recommended additional resources to insurance supervision and had observed that resources devoted to AML/CFT risks from insurance should be adequate. Overall the MER considered that there should be additional resources devoted to insurance supervision, including with respect to AML/CFT risks. The higher number of staff in the insurance division has followed that recommendation. The result is that the number of staff resources in insurance supervision now exceeds that in the banking division and this does not appear to reflect the relative AML/CFT risks of those two sectors (and it would seem unlikely that it would reflect the respective systemic or prudential risk of the two sectors either) is noted below that the authorities stated in discussion that the reason for the lower frequency of mandated onsite inspections of the highest risk sector (trust companies) is a result of the lack of resources in the "Other Financial Intermediaries" division which does not have the staff to review annual

inspections from all DNFBPs. The number of staff in the division dealing with DNFBPs is no greater than that in banking. Although DNFBPs are not subject to prudential supervision, they are a very high risk sector and this disparity does not appear to be justified.

709. The third round report observed that a greater involvement of FMA supervisors in onsite inspection work could improve the overall effectiveness of AML/CFT supervision. While this has occurred to some extent, this report is also recommending an increase in the number of inspections by the FMA staff and this will require a further review of the appropriate resources.

710. It is not possible to assess the effectiveness of staff training without further data on the quantity and quality of training provided to FMA staff. The high turnover of staff in 2010 would have created an increased training need. Discussions with the FMA indicate that there is a general expectation that all supervisory staff should have at least one day's AML/CFT training every year, and this is monitored at divisional level. The AML/CFT Committee records plays a role in coordinating and monitoring training and records scheduled training and respective participants in its weekly minutes. It is also expected that all staff returning from training events should provide others with the training materials. However, there is no overall policy with regard to the quality and extent of training on AML/CFT matters. There is no systematic evaluation or appraisal of the minimum AML/CFT training the FMA needs, nor of the training needs of staff.

711. It is important that the FMA should review the number of staff in the light of their current needs and the recommendations of this report—particularly the importance of a more fully developed risk based approach, including a risk assessment and a clearly articulated AML/CFT policy. For the future, the assessment of staffing needs should take into account the different AML/CFT risk profiles of different business sectors and the consequent need to focus staff in the areas of highest risk (within an overall assessment of staffing needs). Data on the quality and quantity of training should be maintained so as to enable the FMA to monitor the adequacy of training. There should be a policy on the quality and quantity of training to be given to FMA staff and the implementation of this policy should be monitored—preferably within the context of the FMA's overall training policy.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1) Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 and 29.3.1).

712. Pursuant to Art. 5(1) of the FMAA, the FMA shall be responsible for the supervision and execution of sector specific acts regulating the various types of FIs and DNFBPs, such as the Banking Act, the Postal Act, the Lawyers Act, the Law on Professional Trustees, the Law on Asset Management, the E-money Act, etc., as well as certain substantive laws, including the Due Diligence Act. Art. 23 of the DDA also stipulates that the FMA shall be the competent authority to supervise execution of the Act, without prejudice to the powers of the FIU.

713. Pursuant to Arts. 26 and 27a of the FMAA and Arts. 24 and 28 of the DDA, the FMA has the following powers.

714. Ordinary Powers, which can be deployed without cause:

- To carry out or delegate the carrying out of ordinary inspections on a regular, spot-check basis with respect to compliance with the provisions of the Act, whereby the frequency of such inspections shall be determined based on risk, scope, type of FI/DNFBP, and complexity of the business activities undertaken (Art. 24 DDA); and

- To demand from any person subject to the law any information or records it requires to fulfill its supervisory mandate for purposes of the DDA (Art. 28 DDA). The authorities indicated that this would include any type of information and documents, including account and CDD files, and internal policies and procedures. A court order is not needed for this purpose.

715. Extraordinary Powers, which can be used only when there is a suspicion of a breach of the law:

- To initiate procedures to ascertain certain facts, and to obtain all necessary records and information in cases where the reputation of the financial center appears to be at risk or if there is a founded suspicion that any of the laws the FMA is required to supervise has been violated; and to demand the same type of information and records from entities or persons that are not licensed/registered but are carrying out one of the activities referred to under Art. 5 of the FMAA (Art. 26 FMAA);

- To carry out extraordinary inspections or delegate the carrying out of such inspections in case of an indication for doubts as to whether due diligence obligations have been complied with, or where the reputation of the financial center may be at risk (Art. 28 DDA).

716. Taken on their own, these powers provide the FMA with the authority to obtain any information, documents or other records that they consider necessary for the fulfillment of their supervisory function in assessing compliance with the DDA, including beneficial ownership of legal persons and arrangements. The powers have been used extensively to collect such information. They also specifically give the power to the FMA to conduct inspections. They can (and in practice, do) delegate the conduct of most inspections to mandated audit firms under Art. 24 DDA.

717. The meaning of the inspection power is not defined. While the concept of an inspection may appear to be self-explanatory, it is, in accordance with international standards, a uniquely intrusive power. It is rare for any other authority to have the power to examine the personal and confidential financial information relating to institutions and individuals without any requirement that there should be a reasonable suspicion of improper behavior. There is therefore advantage in making explicit, in the law, the extent of this important power. The DDA does not, for example, explicitly cover the following points:

- What premises may be inspected by the FMA—whether the inspection power applies only to those occupied by the person subject to the inspection, or whether the power extends to any premises the FMA may reasonably believe contain information relevant to the assessment of compliance, for example to holding companies subsidiaries or affiliates of the financial institution, regardless of whether or not such entities were themselves subject to the DDA;

- What are the obligations of those subject to an inspection—for example, whether they are required to facilitate the inspection by making documents, personnel and records available in a timely manner and how any obligation to answer questions may be modified by rights to avoid self-incrimination;

- Whether the powers to conduct an inspection apply to former license holders as well as those with a current license (where the inspection was with regards to compliance with DDA obligations when the license was current); and

- Whether the power to inspect includes the power to copy documents or to seize them (and if the latter what obligations the FMA may be under to return them in a timely manner).

718. The FMA point out that they have rarely been challenged on their use of their powers to collect information and when they have been challenged (for example on their right to mount an inspection or to examine all files, allegedly outside the scope of the DDA, in order to determine if the DDA applied), the Criminal Complaints Tribunal has ruled in their favor. The FMA also observe that they are subject to review by the Administrative Court and could not abuse their inspection power.

719. These are important points. On the other hand, if there were to be a challenge, the lack of specificity may be resolved by the courts in a way that limited the FMA's powers and inhibited their ability to function effectively. It may be that the FMA could, in the future be inhibited from exercising powers (for example to inspect premises not occupied by the subject of an inspection, but potentially containing relevant information).

720. Moreover, some of the powers have rarely been tested in practice. The FMA has not sought to carry out inspections in the premises of former license holders or premises where there may be documents relevant to due diligence, but held in premises owned by another person. Some private sector institutions have even questioned whether or not the FMA would have the power to copy and take away confidential customer information (although the FMA has done so in practice).

721. The conclusion to be drawn from this analysis is that, in practice, the FMA has the powers to compel the production of documents and that it has successfully resisted all attempts to prevent its exercise of this power. However, the conflict between the powers to collect information and the secrecy provisions in other laws and the lack of specificity in the description of the inspection power could, in the context of Liechtenstein's general approach to confidentiality (as discussed elsewhere in this report) lead to a challenge. This would suggest that there would be advantage, at the very least, in making explicit that the FMA powers override any confidentiality provisions in any other law and to make explicit the further extent of the inspection powers as well as the rights and obligations of those FMA and those subject to inspections.

Sanctions: Powers of Enforcement and Sanction (c. 29.4); Availability of Effective, Proportionate and Dissuasive Sanctions (c. 17.1); Designation of Authority to Impose Sanctions (c. 17.2); Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3): Range of Sanctions—Scope and Proportionality (c. 17.4).

Powers of Enforcement and Sanction (c. 29.4); Availability of Effective, Proportionate and Dissuasive Sanctions (c. 17.1); Designation of Authority to Impose Sanctions (c. 17.2)

722. Under Art. 25 of the FMAA and Art. 28 of the DDA, the FMA has express powers to issue decrees, guidelines, and recommendations. Decrees through which the FMA imposes a monetary fine on FIs/DNFBPs are considered to be legally binding and may be directly enforced by the courts, if necessary. Such decrees may be appealed to the FMA Complaints Commission, whose decision may in turn be appealed to the Administrative Court.[43]

723. The authorities stated that a decision to conduct an ordinary or extraordinary inspection would generally not be taken in the form of a formal decree. Only in few exceptional cases, namely where a person subject to the law resisted an inspection, did the FMA order such an inspection in form of a decree. In these cases, the person subject to the law consequently appealed the FMA's order. The FMA's Complaints Commission rejected the appeal on the grounds that an order by the FMA to conduct an inspection would not subject to an administrative appeal under Art. 29 of the DDA as such an order does not interfere with the personal rights or the legally protected interest of the applicant.

724. The FMA's sanctioning powers are set out under Art. 31 of the DDA, which provides that the FMA may apply a fine of up to CHF 100,000 on anyone who commits an administrative offense under the law, including a violation of CDD, monitoring, record keeping or STR obligations, or a failure to provide requested documents or information. In addition, the FMA has the power to prohibit the initiation of new business relationships for a limited period of time in case of a repeated or serious violation and to prevent further violations (Art. 28 DDA); and to request responsible authorities to apply disciplinary measures and to keep the FMA abreast on the status of such proceedings (Art. 28 DDA).

725. Under the various sector specific laws, the FMA has additional sanctioning powers available in case of a systematic or serious violation of the law by a specific FI or DNFBP, or in case of a failure to comply with the FMA's demands to restore a lawful state of affairs. Under the Banking Law, for example the FMA may withdraw, terminate, cancel, amend, or revoke a license of a bank. Similar provisions are contained in all other acts regulating the various types of FIs and DNFBPs. As is noted elsewhere in this report, there is apparent ambiguity about which laws apply in what circumstances and in this case, the issue is whether or not the FMA could impose a sanction for which provision is made in a sector specific law, when the breach in question relates to the DDA. In practice, the FMA has shown that it is able to issue written warnings for breaches of the DDA but there is little experience of imposing other sanctions as noted below.

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[43] Beschluss Beschwerdekommission der Finanzmarktaufsicht FMA-BK 2009/10; Beschluss Beschwerdekommission der Finanzmarktaufsicht FMA-BK 2012/19.

726. The violations which may be sanctioned by the FMA pursuant to Article 31 of the DDA are applicable to anyone who:

- refuses to give information, makes incorrect statements, or withholds significant facts vis-à-vis the FMA, an auditor, an auditing company, or an audit office subject to special legislation;
- fails to comply with an order to restore the lawful state or any other order issued by the FMA in the course of enforcing this Act;
- permits the outflow of assets, in violation of Art. 35 DDA;
- in violation of Arts. 5–14 of Regulation (EC) No. 1781/2006 fails to collect, keep, verify, or transmit the required information, carries out or receives transfers of funds, or breaches record keeping or reporting duties;
- fails to establish and update the profile of the business relationship in accordance with Art. 8 DDA;
- fails to carry out risk adequate monitoring of a business relationship in accordance with Art. 9 DDA;
- fails to meet the enhanced due diligence obligations in accordance with Art. 11 DDA;
- maintains a prohibited business relationship in violation of Art. 13(1), (3), and (4) DDA or fails to take appropriate measures in accordance with Art. 13(2) DDA;
- delegates compliance with due diligence obligations to third parties in violation of Art. 14(1)–(3) or outsources them in violation of Art. 14(4) DDA;
- fails to ensure global application of due diligence standards in accordance with Art. 16 DDA;
- fails to keep or maintain due diligence files in accordance with Art. 20 DDA;
- fails to ensure internal organisation in accordance with Art. 21 DDA;
- fails to ensure internal functions in accordance with Art. 22 DDA; and
- fails to have the inspection pursuant to Art. 28 (1) (b) or (c) DDA carried out as a whole or in regard to individual areas of the persons subject to due diligence.

727. The list does not specifically include the provisions in the DDO or guidelines, although the FMA points out that all the DDO provisions or guidelines are linked to specific provisions of the DDA and therefore a breach of the DDO or guidelines would necessarily be a breach of the DDO.

Range of Sanctions—Scope and Proportionality (c. 17.4)

728. The table below gives details of the sanctions imposed by the FMA on banks and insurance undertakings. No sanctions have been imposed on fund management firms, asset management firms or investment undertakings (many of these are eligible for the exemption under Art. 4 of the DDA and have therefore not been inspected for compliance with due diligence obligations).

	2009			2010			2011			2012		
	A	B	C	A	B	C	A	B	C	A	B	C
Banks	34	1	1	19	0	0	31	1	1	20	1	1
Insurance	46	0	1	75	0	0	107	0	1	97	0	0

"A" denotes remedial instructions or written warnings
"B" denotes administrative sanctions
"C" denotes criminal complaints

729. As can be seen, the FMA does not distinguish between remedial measures that are required to address violations of the law and ordnance and written warnings. It should consider making such a distinction in the statistics it keeps in the future.

730. Taken together with the sanctions powers in the sector-specific laws, the range of sanctions available to the FMA is generally adequate. There are criminal sanctions for failing to comply with the DDA and these include imprisonment for up to six months and fines, which for a natural person could be up to CHF 360,000 (US$400,000) and for a legal person could be up to CHF 600,000 (US$670,000). In addition, as an administrative measure, the FMA can give warnings, impose license conditions, remove senior officers, apply administrative fines, limit areas of business, and withdraw licenses. However, with respect to administrative fines, the upper limit of CHF 100,000 would be substantial for an individual but modest in respect of a large financial institution. The FMA should therefore seek the power to impose larger fines on institutions that are more substantial than CHF 100,000 where it is appropriate to do so.

731. It is clear from the table above that the number of sanctions imposed (apart from private written warnings) is negligible. The handfuls of sanctions that have been imposed have been in the form of fines. The FMA should review its internal guidelines with regard to the use of sanctions to ensure that the sanctions power is being used appropriately. Nevertheless, the relatively modest number of sanctions imposed does not detract from the assessment that the powers of enforcement are generally adequate (apart from the level of fines on institutions).

Market entry: *Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 and 23.3.1); Licensing or Registration of Value Transfer/Exchange Services (c. 23.5); Licensing of other Financial Institutions (c. 23.7):*

Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 and 23.3.1);

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

732. All financial institutions require a license and the licensing provisions for each license category include fit and proper criteria.

733. Measures to prevent criminals from owning FIs are set out in the various sectoral laws, namely Art. 17(5) of the BA in combination with Art. 27a and the Annex to the Banking Ordinance (BO), Arts. 15(1)(d) and 19 of the UCITSA in combination with Art. 23 of the UCITSO and the Annex to the BO, Arts. 24 and 67 of the IUA in combination with Art. 32 of the IUO and the Annex to the BO, Art. 10a of the AMA in combination with Art. 8 of the AMO and the Annex to the BO, and Art. 9 of the EIA applies. For insurance companies, the relevant provisions are Art. 18a of the ISA in combination with Arts. 59–61 of the ISO.[44]

734. Pursuant to the provisions referenced above, any shareholder directly or indirectly holding voting rights or capital of a financial institution of 10 percent or more, or who has a significant control power over the FI, must meet the demands imposed to ensure sound and prudent management of the FI. Any intended change in ownership that meets these criteria also has to be reported to the FMA, provided the change in ownership would result in the person holding 20 percent, 33 percent, or 50 percent of the capital or voting rights, or that the FI will become or stop being that person's subsidiary (Annex 8 BO).

735. For banks, investment firms, e-money institutions, investment undertakings under the IUA and UCITSG, and Asset Management Companies, the Annex to the BO requires that for shareholders, the determination of a sound and prudent management of the FI should be based on the following criteria:

- the reputation of the proposed acquirer;
- the reliability of any person that will manage the institution after the proposed acquisition;
- the financial stability of the acquirer;
- whether the financial institution is and will remain able to meet supervisory requirements and whether the relevant financial group is structured in a way that effective supervision,

[44] For example, Art. 18a of the ISA requires those with qualifying shareholdings to meet the demands expected in the interests of sound and prudent management. Arts. 59–61 impose prior notification provision of acquisition of qualifying holdings, provides the FMA with information gathering powers and the power to approve or deny approval.

effective determination of competences and exchange of information between the FMA and other competent authorities is warranted; and

- whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

736. For entities under the ISA, Art. 61 of the ISO sets out the same requirements as the BO.

737. Based on the criteria indicated above, the FMA may oppose a proposed acquisition if there are reasonable grounds to do so, or the information provided by the FI was not complete. The authorities stated that this language means that the FMA has a right to veto a specific acquisition. In the case of insurance companies, the FMA may also order that already completed acquisitions are declared void if the acquirer does not meet the outlined criteria. No such provision is set out in other sector-specific laws. There is no comparable provision in the case of other institutions but, in the last analysis, the FMA could withdraw a license if the new acquirer were not regarded as meeting the criteria.

738. For managers and board members, fit and proper criteria are to be applied under Art. 19 of the BA; Arts. 68, 84, and 85 IUA, and Art. 80 of the IUO; Art. 15(1)(b) of the UCITSA and Art. 21 of the UCITSO; Arts. 6(1)(h) and 7 of the AMA and Art. 4 of the AMO; Art. 18(1) of the ISA and Arts. 7 and 58 of the ISO; Art. 3(i) EIO. Art. 60 the IMA and Art. 2 of the IMO stipulate qualification criteria for insurance brokers. Under each of these laws, managers and board members cannot take up an appointment unless the FMA agrees that they meet the criteria. This provision applies to any board member or manager, even if such individuals are located outside Liechtenstein as the obligation is placed on the institution in Liechtenstein. .

739. Of the referenced laws, only the AMA indicates the types of documents that have to be submitted. The FMA publishes on its website the list of documents to be provided to the FMA to carry out the fit and proper test include the following:

- Signed and dated curriculum vitae;
- Employer’s references;
- Education/career credentials;
- Extract from the Criminal Register (not older than six months);
- Confirmation of residence;
- Any other references;
- Information on any other professional obligations, especially other seats on boards of directors or management (with indication of the company name, purpose, and domicile); and

- Written declaration concerning any pending criminal and administrative criminal proceedings and concerning freedom from collection and bankruptcy.

740. Art. 26 of the BA, Art, 29(4) of the IUA, Art. 10 of the AMA, and Art. 19 of the IMA require FIs to notify the FMA of the composition of managerial organs and bodies, and to immediately notify the FMA of any changes thereof. No such provisions are set out in the EIA, the UCITSG, and the ISA.

741. The FMA confirmed that it has used these powers to require prior notification of board and management appointments and to apply the fit and proper criteria to deny approval to people whom it regards as not being appropriate to be qualifying owners or members of the board of management of FI. The FMA have confirmed that the powers to approve the appointment of qualifying owners or managers or board members on the basis of these criteria also includes the powers to withdraw approval if a person is no longer regarded as meeting the criteria. They therefore have the ability to use the ability to force an institution to remove a board member or manager as a sanction against such individuals. The power to impose an administrative fine also applies to individuals as well as institutions. Approximately half of the board members and directors of Liechtenstein FIs are recruited from outside Liechtenstein, mostly Austria and Switzerland. The background of such people is checked through public databases, and further checks are undertaken on a risk basis. Where such people have previously held a position abroad in a FI, the FMA will consult the relevant regulatory authority. Checks have been done as necessary on employment, academic and other references.

742. The provisions relating to qualifying holders and to board and management will normally have the result that all owners and controllers of FIs will be covered by a requirement to demonstrate integrity. However, it is always possible that a person will be able to exercise control in some other way—perhaps through influence on a shareholder or by acquiring a position as a "consultant" who is, in reality, an executive. It would be safer, therefore, in the context of the requirements for members of the board or management to include any person who carries out the functions of the board or management or otherwise exercises significant influence or control, regardless of the nominal title held. The FMA's practice is to include a check on the source of funds and source of wealth of qualifying owners, along with the other checks on criminal records, public databases, employer references, educational background, residence, the views of foreign regulatory authorities, and other checks as appropriate. The legal provisions quoted above are clear that qualifying owners include direct and indirect ownership, and therefore cover all relevant beneficial owners whose indirect ownership meets the stated threshold. The FMA has stated that applicants who wish to become qualifying holders are required to submit documents evidencing the source of funds and wealth as part of the approval process, although such documents are not included in the list of required documents published on the FMA website. The differences in legal provisions between the AMA, BO, ISO, and other sector laws are noted above. While the assessors accept that, in practice, the FMA can and does check the source of wealth and funds, it would be appropriate to strengthen the provisions by including the documents evidencing the source of funds and wealth in the list of required documents listed on the FMA website and include in the FMA internal procedures manuals a specific and explicit requirement that the source of wealth and funds should normally be checked.

743. Nevertheless, for the most part, the powers regarding ownership and control appear to be adequate. It would not be expected that they should be used with any great frequency and the conclusion is that they are being used effectively.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

744. Pursuant to Art. 7 of the Payment Services Act (PSA), anyone intending to provide domestic payment services that are not already licensed as a bank, e-money institution, or post office is required to obtain a license as payment institution from the FMA. Exempted from this provision are the European Central Bank, central banks of EEA member states, and public authorities of an EEA member state. Pursuant to Art. 7(2), no other entity or person may provide payment services under Liechtenstein law.

745. The term "payment services" is defined under Art. 3(20)(f) of the PSA to include:

- services enabling cash to be placed on a payment account or operations required for operating a payment account;
- services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;
- execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider;
- Execution of the payment transactions pursuant to (c) where the funds are covered by a credit line for a payment service user;
- issuing and/or acquiring of payment instruments;
- money remittance; and
- execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital, or IT device and the payment is made to the telecommunication, IT system, or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.

746. The provision of currency changing services, unless provided by a bank, requires a business authorisation by the Office of Economic Affairs.

747. Art. 3, para 1, lett. h imposes due diligence obligations on payment services providers.

748. In practice the only institutions other than the banks providing a payment service are the post office and, more recently, the e-money institution. The banks, post office, and e-money institutions are all covered by the DDA.

Licensing of other Financial Institutions (c. 23.7)

749. Pursuant to Art. 5 of the FMAA, all FIs licensed in Liechtenstein are supervised by the FMA, including for AML/CFT purposes (Art. 23 DDA).

Ongoing supervision: *Regulation and Supervision of Financial Institutions (c. 23.1); Application of Prudential Regulations to AML/CFT (c. 23.4); Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6); AML/CFT Supervision of other Financial Institutions (c. 23.7))*

750. AML/CFT obligations are set out in the DDA and DDO and apply to all categories of FIs and DNFBPs that conduct financial activities as defined under the FATF standard and listed in Statistical Table 3 above. Pursuant to Art. 23 of the DDA, the FMA is the designated supervisor for all categories of FIs and DNFBPs for purposes of ensuring compliance with the provisions of the DDA and the DDO.

751. The FMA relies almost exclusively on onsite inspections to carry out its supervisory task. The FMA does not require FIs, subject to due diligence obligations to make any periodic reports to the FMA on AML/CFT obligations for off-site analysis (although they have the power to do so and do require periodic reports on prudential matters).[45] Instead for AML/CFT obligations, they rely on the information obtained annually from obligated institutions as a result of inspections. The information provided by the mandated audit firms is wide ranging and provides much of the information that might be obtained through off-site reports. The FMA reviews this information as part of its desk-based analysis.

752. The FMA has chosen to use audit firms to conduct financial and compliance audits on its behalf. Such audit firms are required to be independent of the firms audited. Each FI submits a list of two or three audit firms which it wishes to engage as its compliance auditor. The FMA will then decide whether or not to approve the appointment of that audit firm. Each FI can indicate a preference. This is generally granted. For larger firms whose accounts are audited by one of the major audit firms, it is common for the auditor of the financial accounts also to be the auditor of compliance with regulatory obligations. However, for smaller firms, where the auditor of financial accounts may not be approved as an auditor of compliance there may be separate firms. In practice, even where the same firm has been chosen, mandated audit firms conduct the AML/CFT inspections separately from the audit of accounts and usually, separately from the examination of prudential matters. Even when the examination of AML/CFT and other matters is conducted simultaneously—as the case for smaller FIs—the AML/CFT examination is conducted separately and by a specialist examiner.

753. Mandated audit firms are required to review compliance with the DDA and DDO (taking account of guidance issued on the risk-based approach and sector-specific guidance issued to most

[45] The absence of an off-site reporting regime relating to AML/CFT obligations is a matter discussed in further detail below.

individual sectors except banks). This is done on an annual basis in the case of banks, investment firms, e-money institutions, payment service providers, management companies, asset management companies, life insurance undertakings, branches of foreign life insurance undertakings, and branches of foreign banks, investment firms, e-money institutions, management companies, and payment service providers. However, the post office is subject to an inspection every three years. These inspections must be conducted according to detailed guidance given by the FMA and a report made in accordance with a template issued by the FMA. The auditors must prescribe remedial measures for any weaknesses they find and follow up as appropriate. The working papers are kept in Liechtenstein and are available to the authorities on request. Inspection reports are prepared according to the specifications in the guidance and submitted to the FMA by June in the year following the inspection. Serious violations must be reported immediately.

754. For FIs, there is therefore an annual cycle. The FMA holds workshops for all mandated audit firms, at which it describes the risks the FMA considers to be most relevant for the year ahead. There are two workshops for all mandated audit firms and one for each group of sector specific auditors. For example, for 2013, the FMA has identified the trading in precious metals, particularly gold as presenting a growing risk. The FMA also identifies weaknesses that are prevalent in particular sectors that require attention—such as the adequacy of documentation on due diligence measures. From time to time, the FMA also identifies areas on which it wishes the mandated audit firms to focus. This focus is communicated at the annual workshops, but does not arise from a formal risk assessment of Lichtenstein business.

755. The FMA conducts bilateral meetings with each of the mandated audit firms to discuss their previous performance, as well as the results and risks for individual institutions.

756. The mandated audit firms will then tend to conduct their inspections between March and June. This allows them to take advantage of annual compliance reports prepared by financial institutions under Art. 30 of the DDO and to complete the process in time for the June 30 deadline imposed by the DDA in its guidance 2013/2.

757. Inspections are conducted are according to the guidance 2013/2, which includes advice with respect to sampling and other matters and is supplemented by an inspection report template. The mandated audit firms are required by the guidance to:

- Describe the risks faced by the institution subject to examination;

- Sample due diligence files to review compliance with due diligence obligations including the effectiveness of the customer take on procedures, the implementation of an appropriate risk classification and the identification of those subject to enhanced due diligence (Art. 11, DDA) and those subject to simplified due diligence (Art. 10 of the DDA); and

- Review the internal policies, controls, risk management systems and organisation of the institution being examined, (the inspection template gives further guidance relating back to Art. 31 DDO on internal controls).

758. Some of this guidance—for example, that relating to the assessment of internal controls is written at a high level of generality that leaves considerable room for discretion by the audit firms. In practice, although not specifically required by the guidance or template, mandated audit firms and financial institutions explained that it would be the normal practice for mandated audit firms to:

- Review board papers and minutes to determine if the compliance report and any relevant internal audit reports have been discussed and appropriate action taken;
- Review any relevant internal audit reports and discuss due diligence compliance with internal auditors;
- Review the training materials used by financial institutions to assess the quality and quantity of training (there is , however, a requirement to describe the training concept);
- Review monitoring systems, especially IT systems; and
- Interview senior executive staff, staff with responsibilities for client contact and compliance officers to discuss their understanding of policies (although there is a requirement to name the compliance officer and state if he or she are meeting their legal responsibilities).

759. Audited firms stated that they reviewed the application of due diligence obligations to foreign branches and subsidiaries by visiting foreign branches and subsidiaries themselves or by asking foreign partner audit firms to do so. As noted above, there are 54 subsidiaries and four branches of Liechtenstein banks in foreign countries, All but three subsidiaries and two branches are from the three largest Liechtenstein banks. The foreign subsidiaries are in Switzerland (20); the Caribbean–Cayman Islands and British Virgin Islands (15); the EU, UK, Ireland, Luxembourg, Austria, and Germany (10); Hong Kong (4); Singapore (2); and USA, Japan, and UAE (1 each). The four branches are in UK, Ireland, Austria, and Hong Kong. The FMA stated that they have also undertaken visits to foreign branches and subsidiaries in 2011 (Singapore), 2012 (Austria), and 2013 (Luxembourg). The inspections of foreign branches and subsidiaries are thus undertaken on the same basis as domestic inspections with the majority being undertaken by mandated audit firms and a small number being undertaken by the FMA itself.

760. Reports are written according to a template issued by the FMA. The reports include detailed descriptions of the arrangements within the institution subject to due diligence and assessments of the adequacy of policies, procedures and controls. There is detailed information on a range of indicators, such as:

- the total number of business relationships subject to due diligence obligations;
- the number of business relationships initiated by correspondence;
- the number of PEPs;
- the number of correspondent banking relationships;

- the number of business relationships regarded as complex;
- the number of business relationships where the contracting party or beneficial owner is from a country not applying international AML/CFT standards;
- the number of business relationships where the due diligence was delegated to a third party, or monitoring was outsourced; and
- the number of reports of suspicions of money laundering or terrorist financing made under Art. 17 DDA.

761. The reports contain findings and recommendations. The report must identify complaints (which are breaches of the requirements not regarded as sufficient to attract sanctions) and violations (which may justify a sanction). The audit firm must state concrete measures designed to remedy such violations and prevent reoccurrence. The report should also make recommendations that would address perceived weaknesses, even where the present position may not have resulted in specific complaints or violations.

762. The FMA then conducts an analysis of the information in the reports and updates its risk profile of each institution. The risk profile covers all the risks facing FIs, of which AML/CFT-related risks form a part. It holds a management meeting with FIs to discuss AML/CFT compliance in general and the findings of the inspection report in particular. In the case of particular institutions, it may, in the light of an audit report, issue instructions designed to force the institution to take appropriate action.

763. In practice, although the FMA undertakes some inspections itself both domestically and with respect to foreign branches and subsidiaries, most inspections are conducted by mandated audit firms.

Financial Institution	**2009**		**2010**		**2011**		**2012**		**June 2013**	
	Auditor	FMA	Auditor	FMA	Auditor	FMA	Auditor	FMA	Auditor	FMA
Banks	15	0(4)	15	0(4)	15	2(0)	17	1(2)	17	4
Management of IU	2	0	2	0	2	0	2	0	2	1
Asset Management	102	0	102	0	107	0	107	0	107	5
Life Insurance	18	8	20	5	20	4	20	11	20	6
Insurance Intermediaries.	-	4	10	1	20	3	10	7	10	5

Figures in brackets indicate FMA accompanying an inspection by a mandated audit firm.

764. The FMA has stated that the increase in staff has enabled it to undertake more inspections itself so as to offset the disadvantages, as enumerated in the 2007 MER, of relying on professional firms. In practice, in respect of banks, the FMA undertook just three onsite inspections in 2009–2012 before conducting four in the first half of 2013. It accompanied mandated audit firms on ten occasions (eight of which were in 2009 and 2010). In the insurance sector, the number of onsite inspections was much greater and amounted to a total of 28 for life insurance companies and 15 for insurance intermediaries (many of which have only a limited number of business relationships subject to DDA). It had not undertaken any inspections of investment undertakings or asset management companies in respect of the due diligence obligations before 2013. The FMA were not able to give any explanation for the disparity between the on-site inspections of insurance and banking sectors. The evaluators were informed that the insurance inspections of AML/CFT compliance by intermediaries may have been undertaken as a minor part of a more comprehensive on-site inspection. The absence of any onsite inspections of the securities sector until 2013 was because of the relatively low risk of that sector.

Application of Prudential Regulations to AML/CFT (c. 23.4)

765. The FMA has powers to impose compliance with prudential regulatory standards on FIs subject to the Core Principles. These powers are provided in the sector-specific acts for banking, insurance, insurance intermediaries, asset managers, investment undertakings, and UCITS funds. The powers to grant or deny licenses according to fit and proper criteria are described above. In addition, these laws provide powers to set standards, monitor obligations through onsite inspections and off-site reporting and to impose sanctions. The FMA uses these powers to require reasonable systems of internal control, risk management systems, and to apply ongoing supervision.

766. These powers are relevant to the imposition of due diligence obligations. However, in practice, the DDA provides comparable powers specifically for the purpose of imposing due diligence obligations and there is no direct need to use the sector-specific powers except in the case of licensing.

767. The FMA uses the DDA powers in a similar manner to those powers provided for prudential supervision, particularly with respect to the requirement for internal controls (Arts. 21 and 22, DDA), risk management processes (currently being introduced through a guidance note on the risk-based approach issued in 2013); and the global application of due diligence standards (Art. 16, DDA). The FMA has the power to conduct inspections of foreign branches and subsidiaries. It does so itself to some degree and also requires mandated audit firms to do so.

Effectiveness of Implementation of the Supervisory and Oversight System

768. The data above gives overall numbers for the remedial actions required from FIs. The data does not show how serious these findings were, but the relatively small number of sanctions imposed suggests that the matters requiring remedial actions were not regarded as very serious. Most representatives of the private sector indicated, when questioned, that they did not consider that mandated audit firms were able to find significant failings, and many suggested that there were no violations at all. Such anecdotal evidence must be treated with caution, since it may well

be that many private sector firms would rather not admit to having been subject to significant adverse findings. Moreover, it is clear from the aggregate data that some violations are indeed found by mandated audit firms. Nevertheless, the anecdotal evidence is consistent with the indication given by the relatively low number of sanctions that the findings by mandated audit firms are of limited significance. This result has to be seen in the context of the nature of the Liechtenstein financial sector and the particular risks identified in the discussion of preventive measures. In practice, much of Liechtenstein's financial business is of a nature that is described in the FATF methodology as requiring enhanced due diligence. The authorities have indicated that many of the findings of audit firms and the FMA itself relate to failures to identify the source of assets of the contracting party as required by the DDA, Art. 20 para. 1. In the context of the nature of the Liechtenstein business model such matters could potentially be of very great significance and this further reinforces the concerns arising from the low number of sanctions that the actual findings in practice may be neither very extensive nor serious.

769. It is particularly important, given the high risk nature of much of Liechtenstein's business, that monitoring of compliance by the FMA is undertaken effectively. This implies making the most effective use of all the supervisory tools. In the opinion of the assessment team, the FMA does not fully use all the supervisory tools available to it in the most effective way. In particular, the use of onsite inspections is not risk based; the potential of guidance is not fully exploited, there is no off-site reporting on AML/CFT matters, and, as noted above, there is minimal use of sanctions. The use of onsite inspections, the issue of off-site reporting and the use of guidance are discussed below.

Onsite Inspections

770. The current use of the FMA's primary supervisory tool—the onsite inspection—is not risk based. The DDA states that the frequency and intensity of inspections should depend on the type, scope and complexity, and risk level of the business activities undertaken by the persons subject to due diligence obligations. However, in practice, this is not the case. The FMA itself undertakes a small number of onsite inspections. The number of inspections undertaken by the FMA does not appear to be related to risk (the larger number of inspections for insurance sector as opposed to those for banks, were not justified on the basis of the relative risk of AML/CFT compliance failure in the two sectors). Overall, the number of onsite inspections on AML/CFT conducted wholly by the FMA although higher than was the case at the time of the last evaluation, remains modest in the view of the assessors. So far as mandated audit form inspections are concerned, for the most part, each FI is subject to an examination across the board (with some minor exceptions) every year regardless of any risk assessment the FMA may make of the riskiness of the FI or its business. If the low level of sanctions were to reflect a high level of compliance, it would be surprising to insist on institutions bearing the cost of annual, across-the-board inspections on AML/CFT compliance. However, it is also possible that the low level of sanctions may reflect weaknesses in detecting breaches of the requirements and this in turn could arise from the absence of a risk-based approach focusing on the main areas of vulnerability.

771. The guidance to audit firms does not indicate how the intensity or focus of inspections should be tailored to risk, other than in general terms. It includes a minimum number of files that must be taken as samples, and this applies to all businesses, related only to size and the category of

financial business. The template for reporting requires an assessment of all main requirements of the DDA and DDO. The authorities observe that the two workshops for all audit firms and the additional workshop for sector-specific audit firms were used to indicate the authorities' view of current risks.

772. The onsite inspection system relies heavily on the use of mandated audit firms. This has the advantage that the FMA is able to arrange for the inspection of a wide range of institutions more frequently than would be the case if it relied exclusively on its own staff. The information received from these inspections is useful to the FMA in assessing AML/CFT risk, and it is analysed for its impact on the FMA's overall assessment of the risk of institutions. It forms the basis for the imposition of remedial measures. The FMA also point out that firms who are the auditors of a licensed business's accounts may have a fuller knowledge of the business of that firm.

773. However, the use of mandated audit firms also creates risk that could jeopardise the effectiveness of the oversight system. Each firm is paid by the FI it is examining and to a great extent, in practice, chosen by the obligated firm, albeit subject to FMA approval. This creates a potential conflict of interest. There is a clear risk that, in order to retain business, a mandated audit firm will be less inclined to identify weaknesses that may be costly to remedy.

774. Moreover, there appeared to be some areas where an institution was running a regulatory risk that had not been identified by its audit firm—for example, where a business applied simplified due diligence, or enjoyed an exemption from the DDA under Art. 4, but did not have a system in place to ensure that it knew if the status of beneficial owners changed in a way that may require the introduction of normal or enhanced due diligence. There is clearly also a risk that the limited number of serious compliance failures found by the mandated audit firms as demonstrated by the very limited number of consequential sanctions is in fact indicating that the mandated audit firms are not being sufficiently rigorous.

775. This risk is mitigated to some extent by the FMA's oversight of audit firms. The FMA must approve the appointment of an audit firm. The audit firm is mandated by the FMA. The FMA is the contracting party of the audit firm. Each obligated firm has to put forward two possible audit firms, and the final choice is made by the FMA. The independence of the audit firm is subject to the guidance in Guideline 2013/2 and is also governed by the general independence requirements for auditors. As noted above, the FMA gives guidance to the audit firms, provides them with annual workshops, reviews their inspection reports, and discusses the work of the audit firms with them. It also has bilateral discussions with obligated institutions, and this provides a further opportunity to review the inspection. Moreover, the FMA accompanies the audit firms on some inspections as shown in the data above. The FMA states that it analyses the performance of the audit firms, has a clear picture of their effectiveness and has taken action against audit firms it considers to be failing to conduct inspections properly. Feedback is regularly given to the audit firms.

776. However, these measures to mitigate the risk may not be fully effective in practice. Private sector respondents indicated that, in many cases, FMA staff did not attend for the whole inspection, while the FMA stated that their staff usually attended for the whole inspection. The private sector also reported that it was not always clear whether the FMA staff were using the

opportunity largely as a training session and in others, they appeared to be checking the performance of the audit firms. The oversight of the audit firms by the FMA does not include formal ratings of such firms. There is no systematic procedure involving regular assessments of effectiveness through examination of working papers, conducting post inspection interviews with FIs about the mandated audit firms' effectiveness or benchmarking the performance, comparing different firms' performance. The FMA does not insist on the rotation of mandated audit firm, arguing that long association with the obligated firm increases the auditor's knowledge.

777. Even with the risk mitigation measures described above, however, the potential conflict of interest would remain as would the risk of regulatory capture of the audit firms by the financial institutions.

778. There is a further disadvantage arising from the use of audit firms. The in-depth knowledge of an institution that is gained by the conduct of an inspection is retained by the audit firms, not the FMA staff. The FMA has noted that the audit firms who are financial auditors may have a fuller knowledge of the business of their clients and relying on them to conduct supervisory audits reinforces this difference, to the disadvantage of the FMA. The knowledge of particularly good practices may not so readily be passed to other institutions. The FMA is aware that it is not uncommon for audit firms to allow FIs to address some complaints prior to the completion of the report, and it is always possible that there are some such complaints that are not included in the report.

779. It is noted above in the context of preventive measures that, the typical business model in the private banking and trust company business involves a structure where the contracting party is a professional trustee and the originator of the business is the beneficial owner. The due diligence obligations are focused on the contracting party rather than the beneficial owner—even though that person may often be the "real" client. Greater awareness by the FMA of this issue might have prompted them to impose stronger due diligence requirements for this kind of business as recommended in the preventive measures section.

780. The assessors are aware that the use of audit firms on the scale adopted by the FMA is not an approach that is adopted very widely. It is likely that this is because other supervisors are concerned about the risks identified above. The FMA is entitled to use audit firms if they wish, and it is recognised that the number of inspections with FMA participation has been stepped up as noted above with the figures shown in detail above. Nevertheless, the assessors would repeat the recommendation of the previous MER that the FMA should increase further the proportion of inspections it undertakes itself both with respect to domestic institutions and foreign branches and subsidiaries. By way of an indication, the FMA might seek to ensure that its own staff had the objective of inspecting each institution no less frequently than once every four years.

A risk-based approach

781. Regardless of the approach taken to the conduct of inspections, the blanket obligation to inspect all institutions in every respect of all their DDA and DDO obligations every year is clearly not a risk-based approach and is unlikely to be using the resources in the most effective way. The FATF has mandated such an approach in the new Recommendations, although it was not a

required standard in the Recommendations against which Liechtenstein was assessed in this review. However, the use of a risk-based approach is very relevant to the effectiveness of supervision, and it is in this context that the issue is discussed here. The current practice of requiring across-the-board inspections does not result in excessive costs for the authorities, as the cost is being borne by the institutions. However, in practice the cost of all regulation should be borne by institutions (often through fees) and the fact that some part of the cost does not pass through the FMA's accounts does not absolve the FMA from a responsibility to consider the cost as well as the effectiveness of the regime.

782. The interviews made by the assessors with the private sector demonstrated that, within the financial sector, there were some businesses that posed lower risk and could be subject to inspection on a less frequent basis. The assessors are also confident that, within each sector, there will be better and worse performers, and, within each business, there will be areas of strength and weakness. The assessors are also aware that the risk to the financial center arising from trust company business is much greater than that of some financial businesses and cannot see any justification for a less frequent inspection cycle. The fact that this was justified in discussion with the authorities by reference to inadequate resources within the relevant FMA division underlines the point that the FMA's resources are not being deployed on the basis of risk. The supervision of DNFBPs is not being assessed in this report. Nevertheless, any weaknesses in that supervision would have a direct effect on the supervision of FIs because that supervision takes place in the context of a business model that places substantial reliance on declarations by and due diligence undertaken by trust company businesses.

783. The FMA's description of the approach to risk assessment indicates that it could be made more systematic and effective. The use of the AML Committee as an information exchange mechanism and for developing understanding of risk is to be commended. However, the committee should be charged with preparing an annual review of risk that should be presented to the board for endorsement. This risk assessment should be available to all staff. The risk assessment should then inform an overall policy towards AML/CFT supervision, which should be adopted by the board, documented and communicated to staff. This should then govern the allocation of resources, the approach to onsite and off-site supervision and the prioritisation of the FMA's AML/CFT supervisory activities.

784. The risk categorisation of FIs should be used as the basis for imposing a variable cycle of inspections, with the frequency and scope being tailored to the FMA's understanding of the risk posed by each institution. Clearly this should be done for all prudential risks and not just AML/CFT. However, AML/CFT risks are important in Liechtenstein. They are already included within the risk assessment system and this will ensure that the AML/CFT contribute to the decisions on inspection scope and frequency.

785. Insofar as this results in a reduction of the number of inspections conducted by audit firms for some institutions, this will give the FMA scope to increase the inspections for higher risk institutions such as trust companies and to conduct more itself with a larger staff.

786. The FMA follows up the onsite inspections in the annual meetings it holds with banks and most other institutions. These are useful and are valued by the institutions. In a small jurisdiction,

there is considerable scope for discussion between regulator and regulated institution. The greater use of FMA staff in conducting inspections would enable more institutions to have direct access to FMA staff in a context which would enhance understanding of their objectives and approach.

Off-site Monitoring.

787. Off-site reporting is a valuable tool that is currently not used for assessing compliance with due diligence obligations. It is understandable that the FMA should regard the information it receives from annual inspections as providing information on which they can and do conduct off-site analysis.

788. Although the FMA receives a certain amount of information through the inspection reporting system, it could also insist on an off-site reporting regime that would include submission by institutions of:

- A copy of the risk assessment made by the institution;
- A copy of key internal controls such as the customer acceptance procedure and the effect of different risk categories on internal procedures;
- The number of business relationships in each of the institution's risk categories;
- The number of business transactions involving cash or bearer instruments above a specified level;
- The number of reports made within the FI to the compliance officer but not submitted to the FIU;
- The number of complaints made by customers to financial institutions about due diligence matters; and
- The number of disciplinary actions taken against staff for failing to comply with internal controls on due diligence matters.

789. Although the FMA collects some of this and other information relevant to specific institutions, it does not always collate this information to enable to identify any aggregate trends or to show where individual institutions may be outliers against the average performance. It should consider identifying specific indicators for aggregate analysis of this kind. This information could then be used to inform the annual review of the risk assessment.

790. The FMA should therefore institute an off-site reporting regime that insisted on this information being supplied on a regular basis and any other information the FMA considered appropriate. Such a regime would be useful even in the context of annual inspections, but essential if the FMA moves, as recommended, towards a more risk-based approach.

791. The FMA is entitled to point out that it has a regime that results in more frequent inspections on more institutions than is the case in many jurisdictions. It is also able to receive and analyse the reports it receives in order to build up a picture of the financial sector. However, there is a reason that most countries do not adopt this approach to onsite supervision and that is the risks it poses as described above. To the extent that the FMA continues with this approach it needs to create a more rigorous system of oversight of audit firms and use other measures as described to mitigate the risks.

Guidance

792. The use of guidance to encourage the adoption of better compliance practices is a useful tool but is not being exploited to the full by the FMA at present. It gives the regulatory authority the ability to identify good practice, while leaving it open to the FI to meet the underlying obligations in another equally effective way if they wish. It encourages good practice, but also leaves room for flexibility and innovation. However, to be capable of being used in this way, it is important to identify the status of the guidance clearly.

793. At present, the sector-specific guidance offers an interpretation of the meaning of the DDA and DDO in different sectors (with the exception of banks). There is useful material in the guidance. However, to a large extent, the guidance repeats the provisions in the DDA and DDO that are relevant to specific sectors. The FMA are clear that the guidance cannot add to the DDA or DDO obligations. In principle, it cannot subtract from them either. However, by indicating what might be acceptable to the authorities in fulfillment of a DDA or DDO obligation, the FMA runs the risk of narrowing the impact of the DDA and DDO.

794. Although guidance cannot add to the obligations in the DDA and DDO, it can identify and encourage good practice. The FMA should review the sector-specific guidance to ensure that it goes further than repeating the provisions of the DDA and DDO and identifies best practice that would assist the institutions in meeting the DDA and DDO. As other regulatory authorities have found, it is useful to use nonbinding guidance that can give examples of good practice that would enable the regulated institution to meet the legal requirements in the DDA and DDO. The guidance on a risk-based approach which, although useful, is still at a high level of generality, could also be extended to give nonbinding guidance on examples of best practice. This approach would give flexibility for institutions to find ways other than those suggested in the guidelines to meet the fundamental DDA and DDO requirements. However, the FMA should make it clear that, if an institution did not follow the guidelines, it would have to explain how its arrangements met the DDA and DDO if it were to avoid sanctions for violations of the requirements included therein. The guidance should be revised on this basis and extended to banks. Even in its present form, much of the detail on the interpretation of the provisions of the DDA and DDO are as relevant for banks as they are for other institutions. Moreover, the advantages of providing further guidance on best practice are equally applicable to banks. Overall, the guidance on the risk based approach might, for example, cover in more detail:

- How the risk categorisation should affect the policies and practices of the institution, giving examples of the different procedures and policies that might accompany higher and lower risk ratings;

- What the expectations of the FMA are in respect of the requirement to establish and verify the identity of the beneficial owner in a risk-based manner and specifying the circumstances in which the FMA would be expect the institution to have stronger measures than just the signed statement by the contracting party;

- What particular issues arise in the handling of a customer relationship where the beneficial owner is, in effect, the main customer and driving force in the underlying business and the contracting party is a professional intermediary in Liechtenstein or elsewhere;

- Suggestions of the actions to be taken with respect to higher risk customers, such as the meaning of the reference to "stricter rules" when identifying and verifying identity, examples of "closer and more intensive monitoring" and of "additional measures required," so that the obligated institutions can understand the FMA's expectations;

- The minimum amount of training on AML/CFT matters that might be expected for different categories of employee within FIs;

- More detailed guidance on the role of the compliance officer and internal audit with respect to due diligence and reporting to the board;

- Suggestions as to how to monitor the activities of outsourced compliance departments; and

- Guidance on the extent and frequency of senior management reviews of customer relationships where higher risk customers are involved which are not specifically covered by Arts. 11(4) and (5).

795. More generally, the FMA should consider adopting a more formal and extensive approach using the resources it has itself and those available to it according to the risk. This approach should govern the allocation of staff to different divisions, the resources devoted to each sector, the scope and frequency of inspections, the focus of the guidance and the nature of the off-site regime.

4.16.2. Recommendations and Comments (R.23 and 29)

- Consider amending the DDA to clarify that the powers to undertake inspections and to obtain information for the purpose of administering the Act override any confidentiality obligations in other legislation (preferably also identifying and amending such provisions) (R.29);

- Consider providing further detail on the meaning of the term "inspection," so as to clarify the rights and obligations of the FMA, and mandated audit firms as well as the subjects of inspections, when inspections are conducted (R.29);

- Amend the guidance to mandated audit firms to require such firms to adopt best practices with regard to the reviews of board papers and minutes, training materials, monitoring and IT systems, and internal control documents (R.23);

- Introduce a procedure further to mitigate the risk of regulatory capture of the audit firms by regulated persons, including a rotation requirement and more systematic oversight by the FMA, which would include regular reviews of their performance, rating, benchmarking of their findings, accompanying them from time to time and reviewing their working papers (R.23);

- Include the documents evidencing the source of funds and wealth in the list of required documents listed on the FMA website and include in the FMA internal procedures manuals a specific and explicit requirement that the source of wealth and funds should normally be checked;

- Consider extending the sector specific guidance to banks (R.23);

- Increase the number of inspections undertaken by FMA staff (R.23);

- Develop the risk-based approach by inviting the AML Committee to prepare a risk assessment on an annual basis for adoption by the board to inform an overall supervisory strategy for AML/CFT and thereafter as the basis for determining the scope and frequency of inspections on the basis of risk, the information required by a new more comprehensive off-site reporting regime, focussing on the key risk mitigation policies and procedures of regulated firms; the allocation of FMA resources to those divisions dealing with the institutions posing the highest risk and the detail given in guidance, so that it is focussed on products and services of higher risk and provides greater clarity as to the FMA's expectations (R.23);

- Amend the definition of control in the sector based laws to make sure that any person exercising substantial influence on management, regardless of their shareholding or nominal title, should be subject to the prior approval of the FMA on the basis of integrity and competence (R.23);

- Review the upper limit on fines in the case of companies so as to ensure it is proportionate and dissuasive (R.17); and

- Review the resources of the FMA in the light of the recommendations in this report with a review to allocating resources within the FMA on the basis of risk and taking account of any savings that may accrue to regulated firms, as well as the FMA as a result of a risk-based approach to the frequency and scope of on-site inspections (R.23).

4.16.3. Compliance with Recommendations 17, 23, and 29

	Rating	Summary of factors underlying rating
R.17	**LC**	• Administrative fines for institutions are not proportionate or dissuasive; **<u>Effectiveness</u>**

		• Use of sanctions too limited to act as effective, dissuasive, and proportionate deterrence to noncompliance.
R.23	**LC**	**<u>Effectiveness</u>** • 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; • Absence of a risk-based approach to the allocation of inspection resources to different institutions reduces the effectiveness of supervision; • Limited aggregate off-site analysis of trends and patterns revealed by information received from annual inspections.
R.29	**C**	

5. PREVENTIVE MEASURES—DESIGNATED NONFINANCIAL BUSINESSES AND PROFESSIONS

5.1. Relevant Characteristics of the Liechtenstein Financial System

796. The DNFBP sector in Liechtenstein is, to some extent, dominated by the activities of TCSPs, although auditors, lawyers, dealers in precious stones and metals, and real estate agents are also active, to varying degrees.

797. TCSPs operating in Liechtenstein serve to establish various forms of legal entities for resident and nonresident customers, who may in some cases be represented by resident or nonresident intermediaries. Typically, the TCSP establishes a foundation, company, or *Ansltalt* in Liechtenstein on behalf of the customer. Entities set up in Liechtenstein by TCSPs are often one part of a larger structure or series of structures, of which the Liechtenstein entity can be the parent and which may involve different jurisdictions around the world. It is these situations, particularly in the case of foreign professionals acting as introducing contracting parties, that can have implications for the implementation of effective due diligence by the TCSP. In these situations, the TCSP generally relies on the introducing contracting party for the information and documentation necessary to perform CDD. More broadly, the TCSP might rely entirely on the introducing contracting party throughout the life of the relationship. The TCSP may or may not meet the beneficial owner.

798. In instances where the TCSP does not have direct contact with the underlying customer, the party representing the customer does not appear to provide adequate and verified information to the TCSP, preventing the TCSP from thoroughly understanding the customer and being able to effectively assess and manage risk. To be clear, in such instances, the TCSP might be considered part of the larger legal structure; however, the TCSP might not have adequate insight through the entire legal structure and into the beneficial owner. In these cases, the professional introducing or

representing the customer would provide the requisite beneficial ownership declaration, signed by the professional introducing and/or representing the client, with no information regarding the larger legal structure. Such an arrangement could result in the TCSP being unable to identify and verify the identity of the beneficial owner, or in the TCSP having a limited or skewed understanding of the customer and the risk it presents both to the TCSP and to the DNFBP sector and financial system more broadly. As noted in the general section of this report, accountants are not expressly referenced in Art. 3 of the DDA, but are covered through the catch-all provision for relating to "any natural or legal person to the extent that they contribute to the planning and execution of financial or real estate transactions for their clients" concerning any of the activities that would also subject lawyers to the AML/CFT framework.

Overview

799. Liechtenstein applies the DDA and DDO both to FIs and designated nonfinancial businesses and professions (DNFBPs). In relation to the legal framework, the shortcomings identified under Section 3 of this report thus apply equally to DNFBPs. For casinos, the Casino Ordinance applies in addition to the DDA and DDO. It should be noted, however, that so far no casino licenses have been issued by Liechtenstein.

800. With respect to DNFBPs, the DDA takes a slightly different approach than for FIs in that it not only covers licensed DNFBPs such as auditors and licensed trustees, but in some instances also extends to any other natural or legal person who carries out a relevant activity on "a professional basis." In a number of cases, the courts held that the phrase "on a professional basis" is to be defined widely and include all situations in which a person acts for or intends to make a profit or gain any other economic benefit and carries out activities on a regular and independent basis.[46]

801. For purposes of this report, any reference to a "TCSPs" encompasses any natural or legal persons holding a license under the Act on Trustees, or carrying out any of the activities specified in the bullet points listed below under the heading "TCSPs."

802. Pursuant to Art. 23 of the DDA, the FMA is competent to supervise or monitor all types of DNFBPs, whether licensed or not, to ensure compliance with the provisions of the Act. Art. 3(3) of the DDA requires all persons that fall under the scope of the DDA based on their acting on a professional basis but are not licensed to immediately inform the FMA of this fact. In practice, the FMA only carries out inspections of all types of DNFBPs whether licensed by the FMA or not.

803. The table below indicates the number of licensed DNFBPs under Art. 3 of the DDA:

[46] Supreme Court Decision GE 2011, 64; Supreme Court Decision ES.2010.15.

DNFBPs subject to the DDA (December 2012)		**AML/CFT** **Supervisor + licensing**[47]
Trustees	91	FMA
Trust companies	287	
Persons with certificate under Art. 180a PGR	535	
Lawyers	190	
Law firms	29	
Auditors	33	
Audit firms	24	
Real estate brokers	7	
Dealers in goods	4	
Others	29	

5.2. Customer Due Diligence and Record Keeping (R.12—rated PC in the last MER)

5.2.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since the Last MER

804. In 2007, Liechtenstein's PC rating for Recommendation 12 was based on a number of shortcomings with respect to the obligation to identify and verify the beneficial owner, as well as a lack of requirement to transmit originator information with domestic wire transfers and to apply enhanced CDD for high risk customers, and based on over-reliance by domestic DNFBPs on foreign third party intermediaries to carry out CDD, while at the same time failing to consider such introduced business as high risk. The law also provided for certain exemptions to the application of CDD measures that are not allowed under the FATF standard. Both the DDA and DDO have been revised since 2007 and now provide for more comprehensive identification and verification

[47] No licensing power with respect to persons with certificate under Art. 180a PGR, real estate brokers, dealers in goods, and others.

measures, record keeping obligations, suspicious transaction reporting and internal control obligations.

Legal Framework:

- Due Diligence Act;
- Due Diligence Ordinance;
- Gambling Act (GA);
- Online Gambling Ordinance (OGO);
- Casino Ordinance (CO).

CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1–5.18 in R.5 to DNFBP) (c. 12.1):

805. The provisions discussed under Recommendation 5 apply in an equal manner to FI and DNFBPs. The shortcomings of the legal framework identified under Recommendation 5 above thus are equally applicable with respect to DNFBPs. In particular, verification measures for beneficial owners are not required to be based on reliable sources; the DDA does not set out an obligation for DNFBPs to carry out reviews of existing records as part of the ongoing CDD, including for higher risk categories of customers or business relationships; and the blanket exemption for CDD under Art. 10 of the DDA are not permissible under the FATF standard. As indicated under Recommendation 5 above, the definition of "beneficial owner" as set out in the DDA and DDO is in line with the definition under the FATF standard. Consideration should however be given to include under the definition settlors of a trust arrangement that have no express control powers.

806. Furthermore, the scope of 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. There is no provision to allow for delayed verification only where it can be assured that the delayed measures are carried out as soon as reasonably practicable, and that all aspects of the ML risks are effectively managed. An express requirement that CDD measures have to be applied to all existing customers on the basis of materiality is missing.

807. For casinos, the provisions of the Gambling Act (GA), the Online Gambling Ordinance (OGO), and the Casino Ordinance (CO) set out specific CDD requirements that apply in addition to those under the DDA and DDO as follows:

Prohibition of Anonymous Accounts (c. 5.1):

808. Art. 67 of the OGO prohibits the establishment of anonymous online gambling accounts. For land-based casinos, and in the absence of a specific provision in the GA or the CO, the prohibition under Art. 13 of the DDA to open anonymous accounts or accounts in fictitious names applies also to casinos. The authorities pointed out that an explicit prohibition to establish anonymous accounts or accounts held in a fictitious name for land-based casinos, in any case, would not be necessary as an ongoing business relationship would be established as soon as a chip or guest account is established, and thus to apply CDD measures as outlined below. Accounts held at land-based casinos could thus be neither anonymous nor held in a fictitious name.

When CDD is required (c. 5.2):

Land-based Casinos:

809. Pursuant to Art. 136 ff. CO, certain CDD measures must be taken when an ongoing business relationship with the player is established, as follows

- Providing the player with a chip or player account;
- Providing the player with an electronic carrier medium for game credit which is used for more than one gaming day and which has credit on it of more than CHF 5,000 (4,046 euros); and
- Issuing the player a client card which is recognised by the casino as evidence of identity.

810. In addition, and depending on the type of license a given casino operates, customer due diligence measures must be applied for occasional players either when players first enter the casino, or when processing any of the following transactions:

- Selling or buying back chips or gaming plaques of CHF 3,000 (2,427 euros) or more;
- In the case of machine payouts of CHF 5,000 (approximately 4,046 euros) or more;
- When exchanging currency denominations and foreign currency and other cash transactions of CHF 5,000 (approximately 4,046 euros) or more; or
- When issuing and cashing checks.

811. The authorities noted that in some instances the threshold for CDD on occasional transactions is slightly higher than the 3,000 euro threshold provided under Recommendation 12 of the FATF standard, whereby not all transactions listed in the above paragraph fall within the scope of Recommendation 12. However, the authorities stated that the license issued in 2012 and currently subject to appeal provides for the option of CDD to be carried out on all occasional customers upon entering the casino and that in practice the threshold would thus not be relevant for the time being.

812. Art. 143 further prescribes that certain transactions must be documented in a "player-related manner" which the authorities explained to mean that they need to be linked to the CDD file that was opened on the player upon entering the casino. The relevant transactions are:

- Buying back chips or gaming plaques of CHF 15,000 (approx. 12,000 euros) or more;
- Machine payouts including pay out credit on electronic carrier media for machine gambling credit of CHF 15,000 (approx. 12,000 euros) or more;
- Issuing and cashing non-negotiable checks for CHF 15,000 (approx. 12,000 euros) or more;
- Exchanging currency denominations and foreign currency of CHF 5,000 or more;
- All transfers in the framework of a chip or guest account; and
- All transactions via electronic carrier medium which are used for longer than one gaming day and have credit on them in excess of CHF 5,000.

813. The authorities indicated that this requirement would ensure that the relevant payments can be linked back to a specific CDD file. While this approach is generally in line with the standard, with the exception of transactions through guest or chip accounts, the thresholds set out under Art. 143 is not in line with the threshold of 3,000 euros as prescribed under R.12. It should however be noted that not all transactions listed in Art. 143 fall within the scope of R.12.

Online Casinos

814. Providers of online gambling games are required to open a client account for each player, via which all transactions in favor of and at the expense of the player are to be carried out. No player may hold more than one client account (Art. 68(1) GA). Pursuant to Arts. 124 and 125, identification requirements in relation to the player have to be applied when any of the following situations apply:

- when accepting payments from the player of CHF 25,000 (approx. 20,000 euros) or more, especially payments made by debit and credit cards, bank and postal accounts, e-wallets, and the like, irrespective of whether these payments are made directly by the player to the provider or are processed indirectly via a financial intermediary or are made in one transaction or in several transactions that appear to be connected (Art. 124);
- when making payments to the player in excess of CHF 5,000 (approx. 4,000 euros) Swiss francs, in particular to debit and credit cards, bank and postal accounts, e-wallets, and the like, irrespective of whether these payments are made directly by the provider to the player or are processed indirectly via a financial intermediary (Art. 124);
- when issuing and cashing checks (Art. 124);

- when the balance on the client account amounts to CHF 25,000 (approx. 20,000 euros) or more (Art. 125); or when

- when providing the player with an electronic carrier medium for game credit which is used for more than one gaming day and which has credit on it of more than CHF 5,000 (approx. 4,000 euros) (Art. 125); or

- when issuing the player a client card which is recognised by the casino as evidence of identity (Art. 125).

815. The threshold for the application of CDD in many instances is higher than the 3,000 euros threshold provided for under the international standard. Whereby not all transactions listed in the above paragraph fall within the scope of Recommendation 12.

816. Neither land-based casinos nor online casinos are permitted to carry out wire transfers. Pursuant to the relevant provisions under the DDA and DDO, both land-based and online casinos are required to carry out CDD measures also in case of a suspicion of ML or FT, or in cases where there is doubt about the adequacy or accuracy of previously obtained CDD information.

Identification measures and verification sources (c. 5.3):

817. Both the CO and the OGO require identification of the player and verification of the identity of the player based on documents with probative value. The meaning of the term "documents with probative value" is discussed under R5 of this report. For land-based casinos, documents with probative value are set out under Art. 25 of the GA and include an official picture identification that allowed the player to enter Liechtenstein territory; other forms of official picture identification, as determined by the Liechtenstein *Amt fuer Volkswirtschaft* and that indicate the name, date of birth, and citizenship of the player; or casino internal player cards that have been approved by the *Amt fuer Volkswirtschaft*. For online casinos, Art. 126 of the OGO refers to Arts. 7 and 10 of the DDA for purposes of determining what may constitute a document with probative value.

Identification of Legal Persons or Other Arrangements (c. 5.4):

818. Legal persons cannot be clients of land-based or online casinos. In addition, Art. 58(2) OGO clarifies that payment by cards, accounts etc. in the name of a legal person may not be accepted.

Identification of Beneficial Owners (c. 5.5; 5.5.1; and 5.5.2):

819. For both land-based and online casinos, Art. 139 of the CO and Art. 128 of the OGO permit casinos to assume that the player is also the beneficial owner. However, in cases where the player establishes an ongoing relationship with the casino or carries out transactions under Art. 143 of the CO for land-based casinos or under Art. 124 of the OGO for online casinos, as indicated above, or in case there is an indication that the amounts used by the player are not in line with his financial situation, or if the contact to the player results in other unusual findings, the assumption does not apply. For land-based casinos, the assumption also does not apply when carrying out bank

transfers in favor of the player. Both the CO and the OGO require a written declaration by the player in order to establish and verify the identity of the beneficial owner (Art. 129 OGO and Art. 140 CO). The accuracy of the information must be confirmed by the player by way of signature by his own hand or by way of a secure electronic signature. In addition, the relevant provisions of the DDA and DDO, in particular Art. 7 DDA, apply.

820. There is no requirement for land-based or online casinos to identify and take reasonable measures to verify the identity of the beneficial owner in all cases.

Information on Purpose and Nature of Business Relationship (c. 5.6):

821. There is no specific requirement in the CO or OGO for casinos to determine the purpose and intended nature of the business relationships. The authorities indicated that in the case of gambling games, the purpose and the nature of the business would be clear, namely the achievement of winnings through gambling as well as the amusement.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1, and 5.7.2):

822. Both land-based and online casinos must ensure that the ongoing business relationships are monitored in a risk-adequate manner. They must document all transactions in the course of an ongoing business relationship (Art. 144(1) and (2) CO, Art. 133(1) and (2) OGO). A requirement to set up a business profile for each ongoing business relationship is set out both in the CO and the OGO. In addition, the relevant provisions of the DDA and the DDO apply.

Risk—Enhanced Due Diligence for Higher-Risk Customers (c. 5.8):

823. Both land-based and online casinos are required categorise ongoing business relationships and occasional transactions with higher risks in accordance with the criteria set out in the internal instructions. Ongoing business relationships with higher risks must be more intensively monitored (Art. 145(1) CO) and Art. 134(1) OGO. In addition, the relevant provisions of the DDA and the DDO (particularly Art. 11 DDA) apply.

Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9); Risk—Simplification/Reduction of CDD Measures relating to overseas residents (c. 5.10); Risk—Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high risk scenarios exist (c. 5.11); Risk Based Application of CDD to be Consistent with Guidelines (c. 5.12):

824. Neither the GA nor the CO or OGO provide for simplified due diligence obligations, and none of the cases set out in Art. 10 DDA apply to gambling games. The relevant criteria under Recommendation 5 thus do not apply to casinos.

Timing of Verification of Identity—General Rule (c. 5.13):

825. Depending on the license on the basis of which they operate, land-based casinos must identify the players either upon entry to the casino or upon reaching the thresholds for the obligation to comply with due diligence obligations relating to the processing of occasional transactions

(Art. 25(2) GA). As a general rule, there may be an assumption by the casino that the player is the beneficial owner. The assumption does not apply in relation to ongoing business relationships, or for certain transactions or circumstances as outlined under criterion 5 above. For online casinos, Art. 67(2) GA and Art. 124 and 125 of the OGO states that player identification has to take place before a person may be admitted to online gambling games.

Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 and 5.14.1):

826. There are no provisions under the CO or OGO for the delayed verification of the player. The provisions of the DDA and DDO apply.

Failure to Complete CDD before commencing the Business Relationship (c. 5.15); Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

827. There are no provisions under the CO or OGO addressing the failure to satisfactorily complete CDD. The provisions of the DDA and DDO thus apply.

Existing Customers—CDD Requirements (c. 5.17); Existing Anonymous-account Customers—CDD Requirements (c. 5.18):

828. At the time when the new legislation came into effect no licenses were issued so that there were neither existing customers of casinos nor of providers of online gambling games.

CDD Measures for DNFBPs in Set Circumstances (Applying Criteria under R.6 and 8–11 to DNFBP) (c.12.2):

829. As indicated above, the provisions discussed under Recommendations 6 and 8–11 apply in an equal manner to DNFBPs. The shortcomings of the legal framework identified under Recommendation 5 above are thus equally applicable with respect to DNFBPs. In particular, there is no express obligation for DNFBPs to establish the source of wealth of contracting parties or beneficial owners that are PEPs or to have in place policies or measures to prevent use of technological developments for ML/FT. In the context of intermediaries or introduced business, there is no direct obligation for DNFBPs to satisfy themselves that the third party that is being relied upon has measures in place to comply with the CDD requirements set out in R.5 and 10. For domestic delegating relationships, the law is not entirely clear on who is ultimately responsible for CDD.

830. Record keeping requirements are in place, but there is no express obligation by DNFBPs to keep business correspondence, or to keep transaction records that are detailed enough to permit the reconstruction of individual transactions.

831. For casinos, the obligation to identify PEPs extends to the actual player and the beneficial owner as far as an ongoing business relationship is established. Online casinos need to determine whether a player or beneficial owner is a PEP only for transactions under Art.125 OGO, and land-based casinos only with respect to transactions under Art. 136 of the CO (Recommendation 6).

Record keeping requirements are set out both under the CO and OGO, with cross references to the relevant provisions under the DDA and DDO (Recommendation 10). For Recommendations 8, 9, and 11 and in the absence of any specific provisions in the CO and OGO, the provisions of the DDA and DDO apply also to casinos.

Implementation

General Findings

832. The DNFBP sector in Liechtenstein is particularly high risk given the services offered and the types of customers served, which are often intermediated, nonresident, and components of existing legal structures. However, interviews demonstrated that industry participants do not sufficiently appreciate the high risk nature of the business. Furthermore, generally, the level of comfort with preventive measures was not commensurate with the risk level of the sector. Representatives from DNFBPs were generally aware of the DDA/DDO; however, their working knowledge of the specific obligations outlined in the legal framework was not commensurate with the high risk nature of the industry.

Real Estate Agents

833. Representatives from the real estate industry noted that they do not consider their relationships with clients to be "business relationships" as defined in the DDA, DDO, and industry specific guidance, as the relationship lasts only as long as the duration required by a single transaction. As such, representatives stated that they are only required to perform the due diligence measures outlined in the DDA/DDO in the context of an occasional transaction. Industry representatives noted that they do identify their customer and the beneficial owner, which they noted is rarely different from the customer, as part of the rigorous and strictly regulated land transfer process in Liechtenstein. Representatives noted that they do ask if a customer is a PEP and described having an internal AML program.

834. Representatives stated that in cases where they take good faith deposits from clients, the funds are deposited into an account at an FI, and that all the necessary due diligence information is provided to the FI. Regarding legal contracts, representatives stated that they utilise standard legal forms rather than engage the services of local lawyers, which can serve to partially support statements provided by lawyers that they generally do not engage in real estate-related activities covered by the DDA.

835. The level of CDD implementation by real estate agent appears to be adequate.

Auditors

836. The audit firms interviewed by assessors described their due diligence policies, implemented in their capacity as forensic auditors covered by the DDA/DDO. Some of the auditors noted that they apply simplified due diligence to the majority of their customers, according to the DDA, as the customer is a regulated domestic entity (e.g. a Liechtenstein TCSP). In these instances, which might constitute the entirety of an auditor's business, the auditors asserted that they have

procedures for identifying the customer and obtaining the information necessary to create a customer profile, including the nature and purpose of the relationship and characteristics of the customer. Additionally, the auditors interviewed inquire as to whether the customer is a PEP, but did not express additional procedures for verifying the information provided. In line with the simplified measures set forth in the DDA/DDO, the auditors interviewed stated that their policies do not include procedures for identifying or verifying the identity of the beneficial owner of their regulated customers.

837. Representatives stated that their procedure includes using the information obtained from the client to develop a risk assessment of the customer. Generally, the auditors interviewed noted that their risk assessment of customers incorporates multiple factors, including jurisdictional risk, based on corruption index and the FATF noncompliant list published by the FMA. However, it was unclear if this risk rating informed ongoing monitoring of the relationship. The auditors interviewed stated that they do monitor customer relationships and transactions for suspicious activity, and that flagged activity would require clarification or investigation based on circumstances. However, it was unclear if there are any back-office procedures in place to monitor the customer relationship, to the extent such capabilities would be necessary given the business conducted by auditors, and to ensure that the information provided is accurate and up-to-date. Regarding recordkeeping, the auditors interviewed stated that they keep digital copies of documents for at least ten years.

838. Alternatively, some firms interviewed described their customer base as being subject to the broader obligations set forth in the DDA/DDO, and described due diligence programs similar to those described in the preceding paragraph. However, in these cases, auditors asserted that they identify and verify the identity of the customer and beneficial owner.

839. Generally, interviews with auditors demonstrated that industry participants are aware of the DDA/DDO, albeit with varying degrees of working compliance knowledge of the specific obligations outlined in the legal framework. Such was the case where auditors only engaged in activities subject to simplified due diligence, where the professionals had no history of employing standard due diligence measures. Deficiencies include mechanisms for confirming and verifying the information provided by a customer. Also, questions remain regarding capabilities to monitor transactions, as necessary, and there isn’t a clear correlation to customer risk, and procedures lack mechanisms for identifying suspicious activity.

Lawyers

840. Lawyers consider themselves covered under the DDA only in very narrow circumstances. In practice, many of the law firms interviewed stated that they do not engage in activities covered by the DDA, either as a rule or as a function of the general demand for services. However, many of the law firms interviewed are associated with a separate but related TCSP (appropriately licensed), in some instances the law firm and TCSP might have the same owner, and the lawyers on staff might service both entities. In interviews, lawyers stated that they perform general legal activities under the auspices of a law firm, but will also perform fiduciary activities under the auspices of a TCSP. Therefore, according to interviews, the result of this practice is that lawyers in Liechtenstein, in their pure capacity as lawyers, generally engage in little or no activity that is

covered by the DDA. Lawyers generally noted that they file annual reports to the FMA stating that they engage in no activity covered by the DDA. It holds true, though, that lawyers are covered under the DDA/DDO in certain circumstances. Many of the lawyers interviewed could not describe any relevant due diligence procedures that would be enacted if the lawyer was to engage in a covered activity.

841. It should be noted that some lawyers who do not otherwise engage in activities covered by the DDA stated that they do engage in advising clients on certain issues, including the structuring of legal entities and arrangements, but that they do not, themselves, create the legal entity or arrangement and do not consider such activities covered by the DDA/DDO.

842. One lawyer interviewed asserted that he does engage in activities covered by the DDA, albeit very little. With respect to DDA-covered business, the lawyer asserted that he identifies and verifies the identity of the customer and the beneficial owner using documents, including an extract from the register, trust deed, and a copy of the passport. Additionally, the lawyer stated that he asks DDA-covered relationships whether the customer or beneficial owner is a PEP, but asserted that he does not have any PEP clients. Regarding record keeping, this lawyer stated that he keeps information for at least ten years, in accordance with the law, and also noted that criminal law requires retention of records for thirty years, thus extending the general record retention period.

843. Generally, interviews with lawyers demonstrated that industry participants are aware of the existence of the DDA/DDO, but have little working knowledge of its provision and requirements. Much of the deficiency with respect to the legal sector stems from a lack of understanding of the DDA/DDO, which is a function of a general avoidance of business activity covered by the DDA/DDO. In particular, these issues would relate to developing an understanding of the interests behind a customer, assessing and managing risk, and monitoring the customer on an ongoing basis. Regarding identifying suspicious activity, the lawyers interviewed were familiar with the idea of suspicion associated with payment by an existing or prospective client, rather than suspicion arising from an ongoing relationship.

TCSPs

844. The TCSPs interviewed by assessors described their due diligence policies to include measures to identify and verify the identity of the customer and beneficial owner, and to obtain the other elements necessary to create a customer profile. The relationships established by the TCSP are based on the “contracting party” being considered as the customer, with the beneficial owner being the interested party fronted by the contracting party. Any or all of these persons or legal entities can be nonresidents. As described, it is common for the customer, in that sense, to be a person acting on behalf of a legal entity or arrangement, either foreign or domestic. Alternatively, in some instances, as described by industry representatives, the TCSP might engage directly with a natural person acting in their own name.

845. The procedures described for understanding the identity and authority of the customer generally included obtaining an excerpt from the public registry, in the case of Liechtenstein entities, and various other organic documents in the case of foreign entities. As described, these

documents might include an excerpt from the local registry, a board resolution, power of attorney, or articles of incorporation. Regarding verification of the identity of the beneficial owner, some TCSPs were generally satisfied by the provision of the beneficial ownership declaration signed by the contracting party. Some representatives noted that they might request a passport copy, and possibly request additional documents in certain circumstances.

846. The TCSPs interviewed stated that identification of PEPs is part of their due diligence process and asserted that they do have PEP customers. In addition to whether or not a customer is a PEP, the TCSPs interviewed generally noted that they develop a risk profile for customers based on information collected, which includes country of nationality and domicile. Representatives stated that country risk is based on various public lists including the corruption index and the FATF noncompliant list published by the FMA.

847. Representatives from TCSPs described their processes for monitoring customer transactions according to the risk rating of the customer. TCSPs described their monitoring process to involve the use of transaction parameters assigned according to customer risk ratings. Representatives generally described their operations to involve transactions requests initiated by the customer flowing through the TCSP, which would then order the transaction. As described, the TCSP compares the transaction request against the customer profile before processing. TCSPs stated that inconsistencies are investigated and justified by the relationship manager as appropriate. Additionally, representatives stated that incoming and outgoing transactions are also monitored by the compliance function to ensure that the transactions comport with the customer profile and the transaction limitations. As described, any flagged transactions would require investigation, potentially necessitating justification from the relationship manager, collection of supporting documentation, or approval from the compliance function.

848. Regarding record keeping, the TCSPs interviewed stated that they maintain customer files, including identification and verification documents, for at least ten years.

849. The TCSPs interviewed stated that they have an internal AML policy that is provided to employees, and described internal procedures for AML training and designation of a compliance function.

850. Broadly, the TCSPs interviewed by assessors did not appear to appreciate the high risk nature of their industry, its services, or its customers. Generally, discussions with TCSPs demonstrated that industry participants are aware of the DDA/DDO, but the working knowledge of the specific obligations outlined in the legal framework varied from TCSP to TCSP, as did the descriptions of implementing programs and policies. Some TCSPs described comprehensive programs and policies, while other TCSPs were less familiar with the due diligence obligations. Discussions with the private sector representatives gave rise to certain deficiencies in the TCSP sector's implementation of AML measures. Generally, as this entire sector may potentially pose a higher risk, an informed consideration should be taken to treat such business practices and customers as high risk, including thorough identification and verification of the beneficial owner and ongoing monitoring of the relationship. Deficiencies include measures to develop a thorough profile of the entire customer and related parties and structures. To this end, deficiencies include measures to establish a clear understanding of the interests behind a customer, including the beneficial owner,

and understanding the relationship between the two, through all legal structures, based on reliable information and documentation. Furthermore, deficiencies including ongoing monitoring procedures and procedures for identifying and investigating suspicious activity.

Effective implementation

851. As with the nature of the financial system, the DNFBP sector in Liechtenstein is dominated by potentially high risk customers and relationships. Additionally, this sector is dominated by the activities of TCSPs. While TCSPs are, on the one hand, creating and representing legal structures, of which they often take a management role, that establishes relationships with financial institutions and other DNFBPs, in doing so the TCSP is also entering into a relationship with a customer. The customers of TCSPs are often nonresidents, which may be introduced by an intermediary, and can be part of their own complex structure of foreign or domestic legal entities or arrangements. The risk presented by these customers is further amplified by cases where there is a prioritisation of confidentiality.

852. With respect to auditors, assessors believe that the risk in this sector is generally not high risk, predominantly due to the domestic nature of the business. Similarly, assessors view the risks in the real estate sector as not high risk due to the very small and highly regulated market. Lawyers generally limit their activities to civil and criminal legal work, as such, assessors do not consider this a high risk sector; however, the legal sector's general lack of knowledge of policies and procedures in accordance with the DDA/DDO is of concern. Finally, as noted in the preceding paragraph, the activities of TCSPs pose a high risk to the system due to their engagement with customers generally considered to pose a high risk inconsistent implementation of due diligence measures across the sector, and the general culture of confidentiality.

853. With respect to some auditors and lawyers, the effectiveness of the system is diminished by a general lack of understanding of the obligations set forth in the DDA/DDO, and the requisite implementing policies. Additionally, with respect to auditors, the issues undermining effectiveness are similar to those affecting FIs, and include having a limited understanding of the customer relationship. With respect to real estate agents and lawyers, implementation of the limited obligations appears commensurate with the obligations and the risk level of the sector.

854. In particular respect to TCSPs, the effectiveness of the due diligence framework is undermined by a failure in some cases to use reliable information and documentation to thoroughly understand the customer relationship, related legal structures, and the relationship to the beneficial owner. The risk is increased by the relationships between TCSPs and between TCSPs and FIs, as discussed in paras. 378 and 379, which can result in the TCSP and the FI having an incomplete understanding of the beneficial ownership, the relationship, how the customer fits into a larger legal structure, and the layers of legal entities and arrangements that connect the immediate customer to the beneficial owner, resulting in an inability to effectively assess and manage risk.

855. To further this point, as TCSPs are entitled to rely on professionals acting on behalf of a legal entity, the declaration of beneficial ownership provided to the TCSP may itself be based on a declaration from a third party. Although such a structure may appear to be complex, the sector-specific guidance issued by the FMA entitles a trustee to regard a structure as not complex based on certain criteria, including if he or she is involved in its creation (as would be the case in the example described). Neither the DDA, nor the DDO or the guidance suggest that these kinds of

structures necessarily pose a high risk, and they are not necessarily subject to enhanced due diligence.

856. Although this assessment did not include Recommendation 24, it was noted that issues related to supervision further undermine the effectiveness of the system. One issue relates to the overall allowance for nonlicensed practitioners to operate under a TCSP's license, which could result in unsuitable people remaining at the helm of a trust company. Additionally, issues with respect to oversight stem from the infrequent examination cycle with no off-site reporting requirement, and the use of audit firms, which creates a potential conflict of interest, which could discourage the audit firm from providing recommendations for improvement if costly to the client.

857. In sum, the effectiveness of the AML framework is undermined by TCSPs operating in a sector characterised by high risk, due to multiple factors including high risk clients and the involvement of foreign intermediaries, that do not effectively implement the policies and procedures necessary to thoroughly understand their customer, beneficial owner, related parties and related legal structures based on exhaustive and credible documentation. Effectiveness is further diminished by ongoing monitoring procedures ineffective in identifying and investigating suspicious activity additionally, the effectiveness of the framework is further weakened by issues related to supervision and by uneven implementation of due diligence obligations across the sector.

858. Furthermore, the weaknesses with respect to TCSPs have a cascading effect throughout the Liechtenstein financial system due to the culture of trust amongst TCPs and financial institutions, specifically common practice for financial institutions and other DNFBPs to rely on TCSPs for provision and certification of customer information.

5.2.2. Recommendations and Comments

- Consider revising the definition of beneficial owners under Art. 2 of the DDA and Art. 3 of the DDO to expressly cover the settlor of trusts, regardless of whether they maintain express control powers;

- Art. 11 of the DDA should be amended to clearly require verification measures for beneficial owners to be based on reliable sources and not merely on the signature of the contracting party;

- Both for land-based and online casinos, the requirement to link certain transactions to the customer due diligence file should at a minimum apply to all transactions covered under Recommendation 12 that are equal to or in excess of 3,000 euros;

- Require both land-based and online casinos to identify and take reasonable measures to verify the identity of the beneficial owner as required under Recommendation 12;

- Art. 8(2) of the DDA should be revised to impose an obligation on persons subject to the law to carry out reviews of existing records as part of their ongoing CDD, in particular for higher

risk categories of customers or business relationships. Such an obligation would augment the industry practice of ad hoc reviews;

- For customers that are natural persons, introduce an express legal obligation for DNFBPs to determine in all cases whether a customer is acting on behalf of another person and to take reasonable steps to obtain sufficient identification data to verify the identity of that other person;

- The blanket exemption for CDD under Art. 10 of the DDA should be removed. Simplified CDD measures should be allowed only in cases of proven low risk, and in all cases at least some minimum level of CDD should be carried out by the DNFBPs in Liechtenstein. Simplified CDD in relation to foreign customers should be allowed only in cases where Liechtenstein (as opposed to the DNFBP) is satisfied that the foreign country in which the foreign customer is located complies with and effectively implements the FATF standard;

- Art. 18(2) should be amended to allow only for verification but not identification measures to be delayed in certain circumstances, and should limit the possibility to delay such verification measures to situations where it can be assured that the delayed measures are carried out as soon as reasonably practicable, and all aspects of the ML risks are effectively managed;

- The legal framework under the DDA should set out an express requirement to apply CDD measures to all existing customers on the basis of materiality;

- Art. 9(2) of the DDA should be rephrased to set out an obligation for persons subject to the law to have in place policies or measures to prevent use of technological developments for ML/FT;

- Consider the need for revising Art. 5(2)(b) of the DDA to require the application of CDD measures also to occasional transactions that are not cash transactions;

- For business relationships with PEPs or beneficial owners that are PEPs, consider aligning the provisions of the DDA and DDO to set out an express obligation for DNFBPs to establish the source of wealth in all cases;

- Consider revising the legal framework to include an express power by the FMA or another competent authority to extend the record retention period; to also require the keeping of business correspondence; and to ensure that transaction records are detailed enough to permit the reconstruction of individual transactions in all cases.

- Require land-based and online casinos to determine in all cases required under Recommendation 12 whether a customer or beneficial owner is a politically exposed person;

- Consider requiring DNPFBPs to increase their due diligence focus towards the beneficial owner of the customer;

- Consider means of ensuring DNPFBPs develop more thorough customer profiles based on reliable information, understanding and documenting how a legal entity customer fits into a broader structural framework and the relationship to the beneficial owner and other relevant parties;

- Regarding information and documentation necessary to understand the relationship amongst legal entity customers, intermediaries, and beneficial owners, particularly in the case of foreign parties, consider clarifying what information and documentation is necessary to effectively undertake this task; and

- Consider requiring the compliance function within a DNPFBP to take an active role in the customer on boarding and transaction monitoring and review processes, and to require compliance and management approval according to risk.

5.2.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**	• 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; • 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; • The blanket exemption for CDD under Art. 10 of the DDA is not permissible under the FATF standard; • 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; • No express obligation to have in place policies or measures to prevent use of technological developments for ML/FT; • 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; • No express obligation to keep business correspondence; • No specific requirement that records need to be sufficient to permit the reconstruction of individual transactions;

		• Both for land-based and online casinos, in many instances the threshold for carrying out customer due diligence on transactions is too high; • 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; • 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; **Effectiveness** • Inconsistent application of due diligence measures across DNFBPs, with gaps in implementation of essential measures; • 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; • Lack of emphasis on understanding the nature and purpose of the relationship, including understanding related legal structures and the relationship to the beneficial owner; • 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.

5.3. Suspicious Transaction Reporting (R.16—rated PC in the last MER)

5.3.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since the Last MER

859. In 2007, Liechtenstein law did not require the reporting of attempted suspicious transactions, or of transactions suspected to be linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organisations. The SAR reporting rates for DNFBPs was low. The tipping-off provision applied only for a maximum of 20 days and did not cover directors, officers, and employees. There was no explicit requirement to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. Both the DDA and DDO have been revised since 2007 and now provide for more comprehensive suspicious transaction reporting and internal control obligations.

Legal Framework:

- Due Diligence Act (DDA);

- Due Diligence Ordinance (DDO);
- Gambling Act (GA);
- Online Gambling Ordinance (OGO);
- Casino Ordinance (CO).

860. As indicated above, the provisions discussed under Recommendations 13–15 apply in an equal manner to DNFBPs. However, it should be noted that for real estate agents, the DDA only applies when they are involved in the purchase or sale of real estate. While this limitation is acceptable for the purpose of carrying out CDD measures under Recommendation 12, it is important to note that for purposes of reporting suspicious transactions under Recommendation 16 the FATF standard does not provide for such a restriction.

861. For lawyers and legal agents, auditors, auditing companies and audit offices under special legislation, Art. 17(2) of the DDA limits the obligation to submit STRs to exclude situations where information is received from or on a client in the course of ascertaining the legal position for their client; or while performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received before, during or after such proceedings. Such a limitation is in line with the FATF Recommendations.

862. For casinos, the provisions of the GA, the OGO and the CO set out specific CDD requirements that apply in addition to those under the DDA and DDO as follows:

Requirement to Make STRs on ML and TF to FIU (applying c. 13.1 and IV.1 to DNFBPs):

863. As indicated above, the provisions discussed under Recommendation 13 apply in an equal manner to DNFBPs. Where a suspicion of ML, a predicate offense of money laundering, organised crime, or FT exists, DNFBPs are required to immediately report in writing to the FIU (Art. 17 of the DDA). The reporting requirement is a direct mandatory obligation and is based on a subjective test of suspicion. The objective test, which requires reporting where there are reasonable grounds to suspect the occurrence of criminal activity, does not apply.

STRs Related to Terrorism and its Financing (applying c. 13.2 to DNFBPs):

864. Art. 17 of the DDA requires DNFBPs to report in writing to the FIU when, inter alia, a suspicion of FT and predicate offenses exists. The reference to predicate offenses covers all the circumstances covered under this criterion since terrorist acts and organisations are criminal acts and predicate offense to ML in Liechtenstein.

No Reporting Threshold for STRs (applying c. 13.3 and IV.2 to DNFBPs):

865. All suspicious transactions must be reported to the FIU irrespective of any the amount involved. As mentioned earlier, Art. 18(1) of the DDA prohibits DNFBPs from executing any

transactions which they know or suspect to be related to ML, predicate offenses of ML, organised crime, or FT. Additionally, such transactions must be reported pursuant to the general requirement under Art. 17. A combined reading of these two articles appears to sufficiently cover the requirement to report attempted transactions.

Making of ML and TF STRs Regardless of Possible Involvement of Fiscal Matters (applying c. 13.4 and c. IV.2 to DNFBPs):

866. The reporting requirement does not contain any restrictions relating to tax matters.

Additional Element—Reporting of All Criminal Acts (applying c. 13.5 to DNFBPs):

867. DNFBPs are required to report to the FIU when a suspicion that any criminal activity which constitutes a predicate offense exists domestically. Classification as an offense committed in Liechtenstein requires that the act is also considered a predicate offense under Liechtenstein law, even if the punishable act is considered a predicate offense only in Liechtenstein.

Protection for Making STRs (applying c. 14.1 to DNFBPs):

868. Art. 19 of the DDA protects persons DNFBPs or managers or employees from any civil or criminal liability if they have reported a SAR to the FIU, and it later turns out that the report was not justified, provided the person did not act willfully. During the onsite mission, it was pointed out that Art. 19 is not entirely in line with c. 14.1 since the latter refers to exemption from liability when a report is submitted in good faith. The FIU explained that the German translation of the word “willfully” is more akin to the good faith principle. Under the German text, a reporting entity would not be held civilly or criminally liable, unless the person knew that the report was not warranted and acted in bad faith.

Prohibition Against Tipping-Off (applying c. 14.2 to DNFBPs):

869. Pursuant to Art. 18, para. 3 of the DDA, DNFBPs may not inform the contracting party, beneficial owner or third party that they have submitted a SAR to the FIU pursuant to Art. 17 of the DDA. This provision does not cover directors, officers and employees (permanent or temporary) as required under c.14.2. Additionally, the prohibition only applies to the SAR and not to related information. The authorities explained that Art. 18, para. 3 is interpreted by all practitioners to also include directors, officers, and employees. This was confirmed by a court judgment where the director of a trustee company that had submitted a SAR was fined CHF 7,500 for having disclosed to a third party that a SAR had been submitted to the FIU.

870. The tipping-off prohibition is subject to a number of exemptions. The FMA may be informed by the reporting entity of the submission of a SAR. Art. 18, para. 4 further permits communication on SARs between:

- members of the same financial group;

- trustees, lawyers, accountants, and auditors within the same legal person or within a network; and

- trustees, lawyers, accountants, and auditors, provided they are involved in the same fact pattern and the information may only be used to combat ML/FT.

Additional Element—Confidentiality of Reporting Staff (applying c. 14.3 to DNFBPs):

871. Under Art. 10 of the FIU law the obligation to release information does not extend to the origin of the data and the recipients of transmissions. Pursuant to Art. 5, para. lett. b), the FIU is required to submit a copy of the SAR to the Office of the Public Prosecutor. In those cases where the DNFBPs submitting the report are natural person, this would result in their names and personal details being disclosed.

Establish and Maintain Internal Controls to Prevent ML and TF (applying c. 15.1; 15.1.1; and 15.1.2 to DNFBPs):

872. Arts. 30 and 31 of the DDO require DNFBPs to have in place internal controls and procedures, including in relation to CDD, record keeping, and the detection of unusual or suspicious transactions and the reporting obligation to the FIU. Art. 22 of the DDA and Arts. 34 and 36 of the DDO further require that every DNFBP appoints a compliance officer. There is no specific obligation for the compliance officer to be at a management level. Art. 28(6) of the DDA grants the compliance officer access to any CDD files, transaction records or other relevant information.

873. For casinos, Art. 149 of the CO and Art. 138 of the OGO set out a specific obligation to issue internal instructions on how to implement the obligations under the GA and DDA, and to make these instructions known to all employees of the casino.

Independent Audit of Internal Controls to Prevent ML and TF (applying c. 15.2 to DNFBPs):

874. For casinos, both the CO and OGO require casinos to have in place an audit function.

Ongoing Employee Training on AML/CFT Matters (applying c. 15.3 to DNFBPs):

875. Art. 32 of the DDO requires DNFBPs to ensure that employees involved with business relationships receive comprehensive and up-to-date basic and continuing training, including on regulations concerning AML/CFT and the obligations arising out of the DDA and DDO, and the relevant provisions of the Criminal Code, and the DNFBPs internal instructions.

876. For casinos, both the CO and OGO require casinos to have internal policies in place for ongoing employee training.

Employee Screening Procedures (applying c. 15.4 to DNFBPs):

877. Art. 31 provides that the internal procedures and guidelines must set out adequate verification measures to be applied when hiring new employees in order to ensure high standards in regards to their reliability and integrity.

878. For casinos, both the CO and OGO require casinos to have internal policies in place for screening procedures for new employees.

Additional Element—Independence of Compliance Officer (applying c. 15.5 to DNFBPs):

879. The DDA or DDO do not expressly require that the compliance officer be independent but indicate that the compliance manager shall support and advise management in the implementation of the DDA and DDO and develop the relevant internal procedures to implement the law.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 and 21.1.1):

880. As indicated in Section 3, Art. 11 of the DDA provides that enhanced CDD and more intense monitoring needs to be applied to business relationships and transactions with contracting parties or beneficial owners in countries whose measures to combat ML or FT do not or do not sufficiently meet the international standard. However, the provision is in need of further revision to require enhanced CDD not only with respect to persons in but also to persons from high risk countries.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

881. For all transactions provided under Art. 11(6) DDA as described under Section 3, the background and purpose has to be clarified and recorded in writing, regardless of whether the transaction has an apparent economic or legal purpose or not. Records obtained pursuant to Art. 11 (6) DDA are considered transaction-related records under Art. 20 of the DDA and must thus be maintained in such a manner that requests from competent authorities can be complied with within a reasonable period of time.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

882. Art. 11(7) of the DDA grants the government of Liechtenstein the power to impose notification requirements for business relationships and transactions with contracting parties or beneficial owners from or in countries permanently included on the list of high risk jurisdictions. Apart from such notification requirements, no other provisions are in place that would grant the government or any authority in Liechtenstein to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries.

Implementation

Real Estate Agents

883. The representatives of the real estate sector interviewed by assessors were aware of their obligation to report suspicious activity to the FIU when it suspects that funds are related to illicit activity or FT as it relates to activities covered by the DDA/DDO. Nevertheless, it should be noted that the FIU has never received a SAR from real estate agents.

884. Representatives discussed having an internal compliance policy, and would train employees as necessary, but were not audited.

Auditors

885. The auditors interviewed by assessors were aware of their obligation to report suspicious activity to the FIU, and had policies in place to do so. Annually, the FIU generally receives a low number of SARs from auditors. Descriptions of SARs filed generally involved information regarding the customer of an auditor's customer, the details of which arose during an onsite audit.

886. Some of the audit firms interviewed stated that they have internal written procedures, and that they have a dedicated audit function and have periodic training for employees. Alternatively, some of the auditors interviewed stated that they do not have a formal internal AML program and do not provide training.

Lawyers

887. As discussed earlier, the lawyers interviewed generally stated that they do not engage in activities covered by the DDA/DDO. Nonetheless, the lawyers interviewed were aware of their obligation to report suspicious activity to the FIU when it suspects that funds are related to illicit activity or FT. Annually, the FIU receives few SARs from lawyers, which can be viewed as commensurate with the risk level of the sector. The SARs filed generally involve suspicions regarding payments for services rendered.

888. Whereas lawyers not engaged in activities covered by the DDA/DDO were aware of their obligation to submit annual reports to the FMA declaring as such, representatives did not describe internal policies, training, or audit. Alternatively, lawyers engaged in activities covered by the DDA/DDO, although small, asserted having a policy, and would conduct training as necessary.

TCSPs

889. The TCSPs interviewed described their procedures for identifying and investigating suspicious activity, and, as appropriate, for reporting suspicious activity to the FIU. Similar to FIs, the trigger for investigating a transaction tends to stem from news reporting rather than ongoing monitoring. Annually, the FIU receives a consistent number of SARs from TCSPs, which is less than half of those submitted by banks.

890. The TCSPs interviewed stated that they have an internal AML policy that is provided to employees, and described internal procedures for AML training and designation of a compliance function.

891. The number of SARs submitted by DNFBPs is presented in the table below:

	2009	2010	2011	2012	Jan.-June 21
Professional trustees	74	87	67	76	38
Lawyers	5	6	5	2	4

Auditors	1	2	31	4	0
Dealers in precious goods	0	0	1	1	2
Real estate agents	0	0	0	0	0

Effective Implementation

892. The authorities pointed out that the level of TCSP business has diminished considerably in recent years due to external economic factors. Yet, the number of reports by the sector has remained constant, indicating that the level of reporting has proportionately increased.

893. Nevertheless, the assessors do retain concern regarding the indicators that the trigger the filing of SARs. As noted earlier with respect to FIs, representatives from TCSPs generally referenced external news reports as triggering investigation into a customer and filing of a SAR. Representatives were generally unable to provide an example of a SAR that resulted from monitoring of a business relationship or from suspicious behavior displayed by the customer.

894. The descriptions of internal programs varied across DNFBP sectors, largely according to the amount of DDA-covered activities undertaken by the DNFBP. Inconsistencies in internal programs, which directly inform implementation of obligations by practitioners, can have a negative effect on the effectiveness of the overall framework.

5.3.2. Recommendations and Comments

- Art. 11(6) of the DDA should be further revised to require enhanced CDD not only with respect to persons in but also to persons from high risk countries;
- Ensure that DNFBPs understand the obligation to carry out enhanced CDD under Art. 11(6) of the DDA as mandatory;
- There should be a specific obligation for the compliance officer to be at a management level;
- Grant the government or any authority in Liechtenstein the power to issue and enforce a wider range of countermeasures in relation to transactions or business relationships involving high risk countries;
- Art. 18, para. 3 of the DDA should be amended to extend the tipping-off prohibition to a person's directors, officers, and employees (permanent or temporary) of a reporting entity as required under c.14.2. Additionally, the prohibition should apply not only to the SAR but also to related information;
- Review the level and type of reporting by DNFBP sectors and institutions in order to identify any challenges related to reporting, and, where gaps are identified, take measures necessary to facilitate effective reporting;

- Consider means of facilitating and clarifying reporting with respect to suspicious activities or transactions not associated with any criminal activity;
- Consider removing the automatic asset freezing mechanism that accompanies reporting;
- Consider means of promoting the development of useful internal policies, accompanied by training, in all DNFBPs; and
- The FIU should not be required to disseminate the SAR itself to the OPP as stated in Art. 5, para. 1, let. b) of the FIU Act.

5.3.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**C**	• There is no specific obligation for the compliance officer to be at a management level; • Art. 11(6) of the DDA does not require enhanced CDD with respect to persons from (as opposed to in) high risk countries; • No sufficient wide power to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries; • The tipping-off prohibition does not apply to information related to a SAR; **Effectiveness** • Inadequate understanding of reporting requirements by DNFBPs; • Low number of SARs, except for TCSPs; • Internal programs are not developed by all DNFBPs; • Training is not undertaken by all DNFBPs; • Audit functions to test compliance are not utilised by all DNFBPs.

6. LEGAL PERSONS AND ARRANGEMENTS AND NONPROFIT ORGANISATIONS

6.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33, rated PC in the 2007 MER)

6.1.1. Description and Analysis

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress since the Last MER

895. The 2007 MER noted issues concerning the notion of beneficial ownership not extending to controllers of legal entities that do not hold an economic right to the legal entities' assets; the lack of an obligation for intermediaries to verify beneficial ownership information; and that no measures were in place to ensure that information on beneficial ownership and control of legal entities that are commercially active in the domiciliary state is obtained, verified, and kept in all cases.

896. Since the previous MER, authorities have amended the DDO definition of beneficial owner to extend it also to those who control legal entities and revised the Law on Foundation (2008), introduced a reform of bearer shares and certificates and introduced requirements for certain types of companies to keep shareholders registers at the registered seat of the company (December 2012). As discussed in the analysis, issues remain with regard to the adequacy, accurateness and timely access to information on beneficial ownership.

Legal Framework:

- Persons and Companies Act (PGR);
- Professional Trustees Act (PTA);
- Customer Due Diligence Act (DDA).

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

897. Liechtenstein implements the requirements of R33:

- through a system of central registration of legal entities;
- through TCSPs' implementation of preventive measures as envisaged by the DDA and DDO (including identification and verification of the beneficial owners, although, as noted under Recommendation 5, the verification of the beneficial owner is not based on documents). Art. 180a PGR requires that, for entities that are not commercially active, at least one member authorised to manage and represent the legal entity be licensed as a trustee (hereinafter: 180a PGR Director), and hence subject to the DDA/DDO; and
- relying on the powers of the FMA to demand from the persons subject to preventive measures "all information and records it requires to fulfill its supervisory activities for the purpose of

the DDA" (Art. 28.4 DDA). In those instances where legal entities are not subject to the DDA, authorities can rely on the investigative and prosecutorial measures described under Recommendation 3.

Central registration

898. The Office of Justice (OJ) maintains a Commercial Registry (CR). The PGR requires certain data concerning legal entities to be notified to the OJ and entered in the CR. This information is publicly available. In addition, there are requirements for certain entities to notify the OJ of certain information, which is "deposited" with the OJ, but not entered in the CR. This information is not publicly accessible, but can be requested by any member of the public who can assert a legitimate interest or with the authorisation of the legal entity concerned. In the case of the nonregistered foundations (or for notifications of formation and amendments for foundations not entered in the CR), inspection of files and written documents deposited as well as applications and documentary evidence can only be demanded by the depositor and by the person empowered for this purpose, as well as by universal successors. However the OJ can confirm the existence of a foundation or trust that is not entered in the CR. Art. 120 PGR[48] and other provisions in the PGR require notification of changes of the information that is required to be provided to the OJ. Deliberate failure to register or to notify the required information is punished with an administrative fine up to CHF 5,000. [49] The table below summarises, for each type of entity, what information is entered in the CR or otherwise deposited with the OJ,[50] with reference to the provisions that require notification of changes to the OJ. The table also indicates whether 180a PGR and the conditions for access to the information entered in the CR or otherwise deposited with the OJ are applicable:

[48] "The same procedure shall be followed by the persons entitled to sign for amendments to the articles as for the original articles if they are changed. The full text of the articles must always been enclosed, even in case of amendments of the articles which are not required to register."

[49] Art. 65, Abs. 3 SchlTPGR Anyone who deliberately fails to comply with his duty of registration in the Commercial Register shall be punished by a fine of up to CHF 5,000 by the OJ in administrative proceedings on application or ex officio. If the perpetrator acts negligently, the fine shall be up to CHF 1,000.

[50] The table only indicates information concerning the beneficial owner (including beneficiaries) and management (other information must be submitted to the OJ or entered in the PR).

Type of entity	Information submitted to the Office of Justice (OJ) and/or entered in the Public Register	Obligation to notify CR of subsequent changes and sanctions for non compliance	Conditions to access the information
Establishment (*Anstalt*)	<u>Submitted to the OJ:</u> • Articles signed by the founders (Art. 537.2 PGR). They **may** include beneficiaries. <u>Entered in the CR:</u> • Directors (Art. 538.7 PGR) • The Formation deed (if not included in the articles of establishment–Art. 538. 1 PGR) Formation deed.	Obligation to notify CR of any subsequent changes: Art. 120 PGR; Art. 965 PGR; Art. 41 HRV Sanctions for non compliance Art. 968 PGR, Art. 977 PGR and §65 SchlTPGR	Information entered in the CR is accessible to anyone; Documents submitted to the OJ are not accessible to the public, except when there is justified interest substantiated by prima facie evidence (Art. 953 PGR)
Foundations (*Stiftung*–Common benefit or Private benefit, e.g. family foundations)	<u>Registered foundations:</u> • Entry in the CR is required only for "common benefit" foundations and, for "private benefit," only in those limited instances in which they can carry commercial activities that is in so far they are in pursuit of the foundation noncommercial goals) and includes: founding deed (may include designation of beneficiaries or class of beneficiaries); name and domicile of the foundation; name and place of residence of members of foundation council and of the	<u>Registered Foundations:</u> Obligation to notify Commercial Registry of any changes: Art. 120 PGR; Art. 965 PGR; Art. 41 HRV Sanction for non compliance: Administrative fines (Art. 968 PGR, Art.	<u>Registered Foundations:</u> Information entered in the CR is accessible to anyone; Documents submitted to the OJ are not accessible to the public, except when there is justified interest substantiated by prima facie evidence; Art. 953 PGR <u>Deposited Foundations:</u> Notices and documentary evidence of foundations not entered in the CR or

	legal attorney. Art. 552.14.3). <u>Deposited foundations:</u>[51] • For "private benefit" foundations a "notification of formation", certified by a lawyer, trustee or holder of an entitlement in accordance with Article 180A PGR (name and domicile of foundation; name and place of residence of members of foundation council and of the legal attorney; confirmation that the tangible beneficiaries or beneficiaries identifiable by objective criteria or class of beneficiaries have been identified by the founder) is required to be submitted to the CR.	977 PGR and §66c Abs. 1 SchlTPGR) <u>Nonregistered Foundations:</u> changes concerning the notification of formation must be also submitted to the OJ (Art. 552.20.3 PGR)[52]	of notifications of formation or amendment are not accessible to the public. They can only be demanded by the depositor and by the person empowered for this purpose, as well as by universal successors. Domestic criminal prosecution authorities, the FIU and the FMA have access to the representative or the person authorised to receive service of official communications (Art. 955a PGR).

[51] Art. 1 of the Transitional Provisions of Liechtenstein Law Gazette 2008 No. 220 (new foundation law) states that foundations established prior to the new law (= prior to April 1, 2009) have to report changes pursuant to Art. 552, §20, para. 3 to the OJ. Art. 552, §20, paras. 1 and 2 shall be applied *mutatis mutandis*. As soon as there is a change in the name, the board, the purpose, and so on of the foundation, the new regime with its reporting duties is applicable to a foundation which was established before April 1, 2009, too. Art. 2, paras. 4–6 of the Transitional Provisions of the new foundation law state furthermore: The foundation council of all foundations not entered in the CR shall, by way of express declaration, provide the OJ with express confirmation that the foundation documents comply with Art. 552, §16, item 4. Insofar as applicable, this declaration shall not be permitted to be submitted until a lawful status has been produced. Art. 552, §21 shall apply *mutatis mutandis* to the verification of the accuracy of the declaration. (para. 4). If a lawful status has not been produced by June 30, 2010, the foundation council shall adopt a resolution on dissolution pursuant to Art. 552, §39, which shall be reported to the OJ (para. 5). If the report in accordance with para. 5 has not been submitted by August 1, 2010, the OJ shall request the foundation council to submit a declaration in accordance with para. 4 within a period of grace of six months or to report the resolution on dissolution. If this time limit also expires without submission, the OJ shall notify the judge; the latter shall in special noncontentious civil proceedings declare the foundation dissolved. (para. 6).

[52] "On each amendment of a circumstance contained in the notification of formation and on the existence of a reason for dissolution pursuant to § 39, para. 1, the members of the foundation council shall be under an obligation, within 30 days, to deposit a notification of amendment at the Office of Justice. The representative also has authority to make the deposition. The accuracy of the information in the notification of amendment shall be certified in writing by anattorney at law admitted in Liechtenstein, trustee or holder of an entitlement in accordance with Art. 180a."

			Domestic criminal prosecution authorities, the FIU and the (Art. 955a PGR).
Joint Stock Companies (i.e. companies limited by shares, *Aktiengesells*	Submitted to the OJ (Art. 290.1 PGR): • Articles of agreement[53] (signed by founders) [54] Entered in the PR (Art. 291	Obligation to notify CR of any changes: Art. 120 PGR; Art. 965 PGR; Art. 41 HRV	All information registered in the CR is accessible to the public, without the need of a justified interest (Art. 953.5 PGR)

[53] **Art. 279**

The joint stock company's articles must contain provisions relating to the following:

1. The name and domicile of the company,

2. The company's objects,

3. The amount of nominal capital and individual shares or parts of shares, with a statement as to whether these are registered or bearer shares, the quantity of each type as well as the sum actually paid up, 4. the convening of the general meeting, the shareholders' right to vote and the passing of resolutions,

5. The governing bodies for the administration and, if necessary, for supervision and the manner in which representation shall be exercised,

6. The manner in which company notices to shareholders and third parties shall ensue.

With the exception of No. 6, the provisions shall be deemed to be essential within the intendment of the voidability proceedings.

[54] **Art. 281**

With reservation of simultaneous formation, the following are required for the formation of a company limited by shares:

1. The determination of the articles by the founders, who must sign the draft of such articles,

2. The subscription to the shares forming the nominal capital,

3. The resolution of the general meeting of the subscribers approving the subscriptions and the ensuing payment for shares and appointing the required company bodies.

chaft)	PGR): • Name and domicile of the company • Members of the board of directors (name and domicile). No information on founders, shareholders or B.O. or subsequent changes of ownership (the company is obliged to record shareholders in a share register in which inter alia the following is entered: name, address of business name and registered office of each partner with the amount of their contributions. The company can either submit voluntarily the share register including the said information to the OJ annually or, if not, notify this information for entry in the CR (with name of the partners, their addresses and the amount of their contribution) (Art. 402 PGR).	Sanction for non compliance: Administrative fines (Art. 968 PGR, Art. 977 PGR and § 65 SchlTPGR)	
Limited Liability Company (*Gesellschaft mit Beschraenkter Haftung*)	<u>Submitted to the OJ</u> (Art. 402 PGR): • The company must maintain a share register containing name and address of each member (members can also be legal persons). A list of those entries that is identical to the share register shall be submitted to the	Obligation to notify CR of any changes: Art. 120 PGR; Art. 965 PGR; Art. 41 HRV Sanction for non compliance[55]:	All registered information is accessible to the public without the need of a justified interest (Art. 953.5 PGR)

[55] Once a year the directors are required to provide the share register to the OJ (Art. 402PGR). There is no administrative fine for noncompliance but directors are responsible under civil law for inaccuracies.

	OJ for the purpose of safekeeping with the Register files, or a notification shall be sent that no changes have occurred since the last submission (Art. 402 PGR). Entered in the CR: • Name and domicile of the company • Notarised copy of the statute • Name and residence of all members and directors	Administrative fines (Art. 968 PGR, Art. 977 PGR and § 65 SchlTPGR)	
Limited Partnership with share capital (*Kommanditaktiengesellschaft*)	<u>Entered in the CR:</u> • Members with unlimited liability (Art. 369.2 PGR). • Members of the supervisory board (Art. 372. 2 PGR) • Name and domicile of directors, unless they are members with unlimited liability (Art. 371 PGR) • Notarised copy of the statute (with identification information of only the members bearing unlimited liability) • Name and domicile of the company <u>Submitted to the OJ:</u> • Notarised copy of the statute (with identification information of only the members bearing unlimited liability-Art. 369.1 PGR) • No information on shareholders/member with limited liability required in the articles or	Obligation to notify CR of any changes: Art. 120 PGR; Art. 369 Abs. 3 PGR; Art. 965 PGR; Art. 41 HRV Sanction for non compliance: Administrative fines (Art. 968 PGR, Art. 977 PGR and § 65 SchlTPGR)	All registered information accessible to the public without the need of a justified interest (Art. 953.5 PGR).

	submitted to the OJ. Shareholders need to be recorded in a share register.		
Company Limited by Parts (*Anteilsgesellschaft*)	• Members of the Board of directors must be entered in the CR (Art. 378 PGR) • The company is obliged to record members in a "*Anteilbuch*" (Register of members) with their names and addresses (Art. 379 PGR)	Art. 120 and 379 PGR Art. 965 PGR; Art. 41 HRV Sanction for non compliance: Administrative fines (Art. 968 PGR, Art. 977 PGR and § 65 SchlTPGR)	Registered files are not accessible to the public, except when there is justified interest substantiated by prima facie evidence (Art. 953 PGR)
Cooperative (*Genossenshaft*)	<u>Entered in the CR:</u> • Members of the Board of directors and auditors (Art. 432 and 433 PGR; Art. 77 HRV) <u>Submitted to the OJ</u> • The cooperative is obliged to record members with unlimited liability with their names and addresses in a register (Art. 468 PGR). The register must be submitted to the Commercial Register (Art. 432 Abs. 2 and 3 PGR) and is accessible to the public (Art. 433 Abs. 3 PGR). Articles of association, with a list of members with limited and unlimited liability (Art. 432 PGR) ******* • Membership in a cooperative wherein cooperative assets are liable, members have limited liability or funding obligations can be linked with share-	Obligation to notify CR of any changes: Art. 120 PGR; Art. 965 PGR; Art. 41 HRV Sanction for non compliance: Administrative fines (Art. 968 PGR, Art. 977 PGR and § 65 SchlTPGR)	Information entered in the CR is accessible to anyone; Documents submitted to the OJ are not accessible to the public, except when there is justified interest substantiated by prima facie evidence (Art. 953 PGR)

	certificates. The cooperative society shall keep a register on the owners of investment certificates and register there any changes that occur. The provisions about registered shares shall apply (Art. 447 Abs. 1 and 2 PGR).		
Commercial and non commercial association (*Verein*)	Not required to register, unless the object is to engage in commercial activities or there is an obligation to appoint an audit authority (Art. 247 PGR). <u>Registered association:</u> The members of the board of directors must be entered in the Commercial Register (Art. 93 HRV). If the articles of association provide limited liability or limited reserve liability for all members, directors are obliged to record members with their names and addresses in a register (Art. 253 Abs. 2 und 3 i.V.m. 468 PGR). The register is not submitted to the Commercial Registry.	Obligation to notify CR of any changes: Art. 120 PGR; Art. 965 PGR; Art. 41 HRV Sanction for non compliance: Administrative fines (Art. 968 PGR, Art. 977 PGR and § 65 SchlTPGR)	Information entered in the CR is accessible to anyone; Documents submitted to the OJ are not accessible to the public, except when there is justified interest substantiated by prima facie evidence (Art. 953 PGR)
Trust enterprise (*Treugesellschaft*—with legal personality)	<u>Submitted to the OJ</u> (Art. 932a.15.2 PGR): • Authentic or certified copy of trust articles <u>Entered in the CR:</u> • Members of the board of directors ("*Treuhänderrat*") (Art. 932a.15. 2 PGR) ****** Founder(s) not entered in CR or submitted to OJ	Obligation to notify CR of any changes: Art. 120 PGR 932a.16 PGR; Art. 965 PGR; Art. 41 HRV Sanctions for non compliance: Administrative fines (Art. 968 PGR, Art. 977 PGR and § 65	Information entered in the CR is accessible to anyone; Documents submitted to the OJ are not accessible to the public, except when there is justified interest substantiated by prima facie evidence (Art. 953 PGR).

		SchlTPGR)	
Branches of foreign companies domiciled in Liechtenstein	• Members of the board of directors of the foreign company and the representative of the branch establishment must be entered in the Commercial Register (Art. 291aand 291b PGR). • Difference: non EU: in addition (law of the state, legal form, seat of company, purpose of main, amount of share capital.	Obligation to notify CR of any changes: Art. 120 PGR; Art. 965 PGR; Art. 41 und 105 HRV Sanction for non compliance: Administrative fines (Art. 968 PGR, Art. 977 PGR and § 65 SchlTPGR)	Information entered in the CR is accessible to anyone; documents submitted to the OJ are not accessible to the public, except when there is justified interest substantiated by prima facie evidence (Art. 953 PGR)

899. As explained in the table above, with the notable exception of private purpose foundations[56] and some types of associations, all other legal persons are required to register in the public

[56] Art. 1 of the Transitional Provisions of Liechtenstein Law Gazette 2008 No. 220 (new foundation law) states that foundations established prior to the new law (= prior to April 1, 2009) have to report changes pursuant to Art. 552 § 20, para. 3 to the Office of Justice. Art. 552, § 20, paras. 1 and 2 shall be applied *mutatis mutandis*. In other words: As soon as there is a change in the name, the board, the purpose and so on of the foundation, the new regime with its reporting duties is applicable to a foundation which was established before April 1, 2009, too.

Art. 2, paras. 4–6 of the Transitional Provisions of the new foundation law state furthermore: The foundation council of all foundations not entered in the CR shall, by way of express declaration, provide the OJ with express confirmation that the foundation documents comply with Art. 552, § 16, item 4. Insofar as applicable, this declaration shall not be permitted to be submitted until a lawful status has been produced. Art. 552, § 21 shall apply *mutatis mutandis* to the verification of the accuracy of the declaration. (para. 4).

If a lawful status has not been produced by June 30, 2010, the foundation council shall adopt a resolution on dissolution pursuant to Art. 552, § 39, which shall be reported to the OJ. (para. 5).

If the report in accordance with para. 5 has not been submitted by August 1, 2010, the OJ shall request the foundation council to submit a declaration in accordance with para. 4 within a period of grace of six months or to report the resolution on dissolution. If this time limit also expires without submission, the OJ shall notify the judge; the latter shall in special non-contentious civil proceedings declare the foundation dissolved. (para. 6).

registry. Of those that are required to register, only in the case of Limited Liability Company, Limited Partnership with share capital and Cooperatives (although only with regard to the members bearing unlimited liability), and in the case of associations is the information about formal legal ownership (members/owners) available in the CR. The certification required for "deposited" foundations was introduced with the reform of 2008, and it is not applicable to foundations established prior to the entry into force of the reform[57] (the OJ estimates that these foundations are approximately 3,000 (the new "deposited" ones are 28,815).

900. No information on beneficial ownership or beneficiaries is entered in the CR or deposited with the OJ. In the case of foundations subject to registration (common purpose or if the foundation carries out commercial activities) and *anstalten* (establishments) the deed may contain information on the beneficiaries. However, this is very seldom the case: in practice, as the assessors were told, the beneficiaries or class of beneficiaries are named in regulations/bylaws that are not required to be entered in the CR or deposited with the OJ. This is also the case of the trust enterprise, where the founders or beneficiaries are appointed in the bylaws, which are not subject to registration or disclosure to the register. The articles of association of the *anstalt*, which must be signed by one or several founders, are subject to entry in the CR. However, it is very common that a trustee or a lawyer acting as a trustee forms the establishment in a fiduciary capacity (hence in his/her own name as the founder). The same happens with foundations, where the foundation can be set up by a trustee or lawyer acting as a trustee as the founder's agent. In this scenario, which is very common in practice, only the agent's name would appear in the register as the founder. It is important to note that in the Liechtenstein's legal system it is always the "real" or "de facto" founder (that is, the person funding the foundation or the *anstalt*) who is recognised as such in the eyes of the law. In practice, when the foundation or *anstalt* is established by a lawyer or trustee on a fiduciary basis, the lawyer or trustee would transfer the "founder's rights," usually embedded in a title, to his/her client (the real founder) by means of cession of the title to the real founder. This transfer is not subject to submission to the OJ. In the case of the founder rights embedded in the statutes of the *Anstalt*, the statutes shall determine who shall benefit from the profit of the establishment (beneficiaries) and the manner in which these shall be determined specifically (Art. 545.1 PGR). If no third parties have been appointed as beneficiaries, it shall be assumed that the bearer of the founder's rights is the beneficiary (Art. 545.1 bis PGR). However it is common practice that the beneficiaries are identified in the bylaws, which are not, as explained, subject to registration or deposit. There is no requirement to enter the settlor of the trust enterprise in the CR.

Implementation

901. As mentioned earlier, there are requirements to notify the OJ of any change to the information that is subject to entry in the CR or notification to the OJ, with sanctions for

[57] Under the previous regime "deposited" foundations were required to deposit relevant documents with the OJ. Nonregistered foundations (pursuant to new foundation law): are under the obligation to deposit notification of formation at the Office of Justice (Art. 552 § 20 PGR)

noncompliance. The OJ is staffed with 17 persons. There are more than 53,000 entities registered in the CR or otherwise deposited or notified with the OJ. However, no sanctions have ever been issued for failure to comply with the notification/registration requirements. The authorities explain that if the OJ becomes aware of instances of noncompliance, they would request the relevant firm to comply without the need to impose a sanction. In the absence of statistics (for example on the number of such instances, of the types of violation), it is not possible to conclude that this approach is effective. Sanctions appear also to be not dissuasive, given the limited amount (up to CHF 5,000). Authorities stated that they do not do active controls, for the resources are limited, but also because they rely on the legal certainty (for civil law purposes) that registration/notification attains, which, in their assessment, triggers a high level of compliance. Common benefit foundations (subject to mandatory registration) are subject to the inspection of the FSA, who stated that they would inspect approximately 50 foundations per year, selecting them on a random basis, but in a way so that in the sample always covers a small, medium and large office[58] (common purpose foundations are also discussed more in detail under SRVIII).

Other requirements:

902. With regard to Joint Stock Companies and Limited Partnership with share capital (in the case of registered shares, for bearer shares see analysis under criterion 33.3), there is a requirement for these companies to record the names of the shareholders, with sanctions for non compliance, recently introduced by the PGR amendments adopted on December 21, 2012, which came into force on March 1, 2013. These amendments make it compulsory for all of these companies (including the existing ones) to maintain at the company's headquarters (Art. 329a PGR) a register of the owners of the shares containing the name of the shareholder, birth date, nationality, and place of residence, or legal business name and place of business (Art. 328 PGR). Further, for those companies that are subject to mandatory audit requirements (joint stock companies are always, pursuant to 350 PGR, as well as limited partnerships with share capital and European companies), compliance with the duty to maintain share register must be examined as a part of the annual audit or review (326a PGR). In case of any deficiencies, the person performing the review must immediately submit a report to the Office of Justice (Art. 326i.2 PGR) who must request the company to remedy the deficiencies and fix a deadline for it (326i.2 PGR). The Office of Justice must report to the Regional Court, if the deficiencies are not remedied.

Requiring company service providers to obtain, verify, and retain records of the B.O. and control of legal persons

[58] In total, approx. 200 common-benefit foundations are exempted from establishing an audit firm. Therefore, these common-benefit foundations are inspected by the FSA periodically every third year. In addition to this supervision of the common-benefit foundations, the FSA inspects nonregistered foundations according to Art. 552 § 21 PGR. From the total of nonregistered foundations the FSA selects on a random basis 50 of these foundations every year.

903. Authorities indicate that they rely on TCSP to obtain, verify and retain records of the beneficial ownership and control structure of legal persons. There are some challenges (legal and effectiveness, the latter described in the effectiveness section) to this approach. As mentioned earlier, in the case of noncommercially active entities there is a requirement to have in place a 180a PGR director, which triggers the CDD requirements of the DDA/DDO through the mandatory licensing regime as a professional trustee.[59] However, this requirement does not apply to commercially active companies.[60] Every legal entity that operates a business in a commercial is required by Art. 192(8) PGR to have accounts audited by external auditors or prepared by external accountants, which are also covered by the DDA/DDO.

904. The DDA applies also to persons that provide a registered office, business address, correspondence, or administrative address and other related services for a legal entity on a professional basis. The limitation of this requirement to those who provide the service on a professional basis, which applies also in the case of trustees, means that there could be cases of private trustees or private providing of a registered office which would not fall under the DDA. The jurisprudence has interpreted in a very broad way the concept of professional basis,[61] but this does not rule out entirely the possibility. The DDA applies also to natural and legal persons, to the extent that they act as a nominee shareholder for another person.[62]

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[59] As explained earlier, Liechtenstein requires (Art. 180A PGR) that at least one member of the administration of a legal entity authorised to manage and represent must be a citizen of a Contracting Party to the Agreement on the EEA, a person considered equivalent under an international agreement, or a legal person and must have a license issued pursuant to the Professional Trustees Act.

[60] "Legal entities shall be exempt from the obligation under para. 1 which, pursuant to the Commercial Code or another special law, are required to have a general manager or which are supervised by the government, a municipality, or another authority."

[61] This applies "when there is an intention to make a profit", which can be assumed to exist where the activity in question is carried out independently, regularly (frequency of the activity), and for remuneration (01.04.2011 03 ES.2010.15). The case quotes the Austrian Administrative Court of Justice (*Verwaltungsgerichtshof*) which "has repeatedly discussed the question of when an activity is carried out with an intention to make a profit, and it has ruled in constant practice that there is no intention to make a profit where the remuneration is supposed to merely cover all or part of the expenses involved. This, however, was about a situation where the amount of the fees demanded was so low from the outset that only the costs actually incurred would be covered (VwSlg NF 4634A, 7736A, 9023A; 4 Ob 401/85). But this practice confirms an intention to make a profit if the transactions corresponding to the activity are entered into in such a way that the option of making a profit is left open (VwSlg 2361A). It is stated in the decision of the Administrative Court of Justice of January 31, 2001, 2000/09/0144 that it is sufficient for an intention to make a profit that another economic benefit is obtained, even if that benefit is obtained only indirectly."

[62] Except for the case of a company listed on a regulated market that is subject to disclosure requirements in conformity with EEA law or subject to equivalent international standards, or to the extent that they provide the possibility for another person to carry out that function.

Implementation

905. As discussed extensively under preventive measures for FIs and DNFBPs, the business practice is for Liechtenstein "trustees" (this term is used to include both the case of those setting up legal entities and offering management and directorship services as well as trust-ship services) to be introduced to new clients through foreign counterparts, such as trustees, lawyers, TCSPs and FIs (particularly from Switzerland). In most cases, discussion with the private sector indicated that, in practice, Liechtenstein trustees are satisfied to obtain from their foreign counterparts a declaration (signed by the foreign counterpart) on the beneficial ownership and a copy of an identification document of the person identified as beneficial owner by that foreign party. While in practice the Liechtenstein trustee would likely know who the legal owner is (since he would be personally liable, for example, for making payments to persons who would not be entitled to receive them), this does not always result in the real beneficial owner's being always known to the Liechtenstein trustee. For example, in cases in which the "client" of the Liechtenstein trustee is a foundation in Panama, introduced by a Swiss lawyer and owned by a Liechtenstein foundation that the Liechtenstein trustee has set up: under the current DDA requirements concerning identification and verification of beneficial owner, the Liechtenstein trustee can obtain a from the Swiss lawyers or from the client (the Panamenian foundation) a declaration concerning the beneficial owner, a natural person. Copy of an identification document of that natural person could be also obtained, but, strictly, this is not required. These documents, as mentioned under the analysis of Recommendation 5, may not be sufficient to identify who the real beneficial owner is.

906. An additional challenge is that, in this scenario in which foreign trustees, lawyers or other TCSPs introduce clients to their counterparts in Liechtenstein, the actual documents confirming beneficial ownership (for example the bylaws or the power of attorney) may be in the foreign country. In the case of very complex structures (for example a Liechtenstein foundation holding shares or participations in a layered structure of other legal entities, incorporated in different jurisdictions where company law favors anonymity) it would be difficult for the Liechtenstein trustee to identify the ultimate beneficial owners. As noted under Recommendation 5, the information given by the foreign introducers may not always be reliable. Meetings with the private sector have also showed that DNFBP's implementation of CDD requirements is uneven, with the trustee business being probably one of the weakest links in the effective implementation of these requirements, which poses an additional challenge.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

907. As mentioned earlier, Liechtenstein relies on supervisory powers of the FMA to obtain or have access to beneficial ownership information. These are envisaged by Article 28.4 of the DDA, which provides that the FMA may demand from the persons subject to due diligence as well as from the auditors it uses to conduct inspections "all information and records it requires to fulfill its supervisory activities for the purposes of this Act" (the DDA). According to the law, this power can only be exercised to fulfill the supervisory responsibilities of the FMA, which narrows the scope of the power. Additionally, the authorities can rely on the search and seizing powers under the CPC (reference is made to the analysis of recommendation 3 and the issues noted therein that may affect those powers).

Legal and implementation issues

908. There are some serious legal and implementation impediments to this approach. As mentioned above, the information can only be requested for the purpose of supervisory activities, which limits the scope of the power. Authorities demonstrated that the FMA has successfully exercised the power to compel information, including information subject to confidentiality requirements, in the context of its supervisory functions. However, the assessors have reservations that, outside of that context (for example to exchange information with domestic counterparts, because of legal issues noted elsewhere in this report) those powers could be successfully exercised. There are no practical cases in this regard.

909. Nominee directors and shareholders are permitted under Liechtenstein law and are frequently used, especially in the case of foundations and *anstalten*. As mentioned earlier, natural and legal persons who act as a nominee shareholders are subject to the DDA (Art. 3.1.s) and to the requirement to identify and verify the beneficial owners. However, the law does not require such a nominee to disclose the fact that he acts on behalf of the beneficial owner and the register of shareholders does not identify nominee shareholders. The provision also exempts the application of the DDA if the professional nominee shareholder holds shares in a company listed on a regulated market that is subject to disclosure requirements in conformity with EEA law or subject to equivalent international standards, or to the extent that they provide the possibility for another person to carry out that function.

910. The DDA provisions do not specifically apply to those who act as nominee directors. Authorities consider that nominee directors would be covered by Art. 3.1.t of the DDA: this provision applies "to natural and legal persons who, on a professional basis and on the account of a third party, act as a partner of a partnership or a governing body or general manager of a legal entity or carry out a comparable function on the account of a third party," so to those who provide directorship services on a professional basis but not to nominee directors as this provision, unlike 3.1.s. (nominee shareholders), does not specifically refer to nominees. There is not an obligation for such persons to disclose on whose behalf they are acting as a nominee director (if they acting as a nominee).

911. On the implementation side, the DDA power of the FMA to obtain information or request documents from FIs/TCSPs outside the exercise of its supervisory functions has never been tested and assessors have reservations that it could. For obtaining information from the FIs (which could also be related to beneficial ownership information, safe the issues noted on the reliance on introducers and the effectiveness by financial institutions in implementing CDD) the FMA uses the powers envisaged by the banking and securities law. Despite some potential uncertainties in the legal framework, authorities demonstrated that, in the case of DNFBPs, particularly TCSPs, they can use the DDA power to compel information in the context of the supervisory functions, even with respect to information covered by secrecy. However, the firms interviewed by the assessors had very mixed views. The majority would see these powers as applying only in the course of onsite inspections, and not in the case of a request outside that process. Some of them also stated that they would not allow the auditors carrying inspections on behalf of the FMA to obtain the information. Very few were uncertain as to whether this information could be in fact

provided; holding that, as the first line of defense against such a request, they would argue that the information is covered by confidentiality requirements, including privilege.

912. This raises serious issues about the timeliness of the access to the information, but also, considering the issues noted on the implementation of CDD by TCSPs and the characteristics of the business (foreign introducers, and tendency to rely on those introducers for identification/verification of beneficial owners) with regard to the adequacy or accuracy of the information.

Prevention of Misuse of Bearer Shares (c. 33.3):

913. As noted in the 2007 MER, under Liechtenstein law, bearer shares in the form of *Inhaberaktien* (bearer shares), *Inhaberpapiere* (bearer instruments), or *Treuhandzertifikate* (trust certificates) can be issued by joint stock companies, limited liability companies (Art. 323 PGR), cooperatives (Art. 447 PGR), *Versicherungsvereinen auf Gegenseitigkeit und Hilfskassen* (Art. 508 PGR), foundations (Art. 567.4 PGR in connection with Arts. 928.1 and 3 PGR), and limited partnership with share capitals and trust enterprises. Trust can also issue bearer paper (certificates embedding beneficiary's rights).

914. As mentioned earlier, Liechtenstein reformed its bearer shares system with law no. 67/2013, which entered into force on March 1, 2013. This regime requires the immobilisation of the bearer shares through a deposit with a custodian, who is required to maintain a register that must contain certain information. Immobilisation of bearer shares of entities for joint investments in securities, as well as investment funds and investment companies is not required. Authorities explained that some of these entities are publicly traded, and that, for those that are not, there are requirements to keep share registers. It is difficult to conclude whether, in the case of non-publicly traded entities, these requirements would be sufficient to address a risk of ML, as it is not known the number of such shares circulating in the market.

915. It has to be noted from the outset that the new regime does not necessarily ensure in all instances the identification of the real beneficial owner.

Custodian

916. The custodian is appointed by the company (or the court), must be entered in the CR with a specific reference to his/her functions and must be either:

- Subjected to the DDA or a regulation and supervision abroad equivalent to Directive 2005/60/EC (Art. 326.b.2.1 PGR);

- If they are not subject to regulation under point 1, their registered office or residence is in Liechtenstein and they have an account in Liechtenstein or another EEA member state in the name of the shareholder. (Art. 326.b.2.2 PGR);

- In the case of legal persons under Art. 180a, para. 3, the custodian need not be subject to the DDA or a regulation and supervision abroad equivalent to Directive 2005/60/EC or have a

registered office or residence in Liechtenstein; in such cases, a bank account in Liechtenstein or another EEA member state in the name of the shareholder shall suffice. (Art. 326.b.2.3 PGR).

917. The custodian is not always a professional intermediary subject to DDA requirements, hence required to identify and verify the identity of the beneficial owner.

Information required to be registered

918. The register must be kept at the registered office of the company (which, according to Arts. 113 and 232 PGR, must be in Liechtenstein). For each bearer share, the following information is entered in the register: the shareholder's name, birth date, nationality, and residence or legal business name and place of business, the date of deposit and, as the case may be, an account in Liechtenstein or another EEA member state in the name of the shareholder.

Transitional regime

919. Bearer shares which were issued prior to entry into force of the Act (March 1, 2013) must be deposited with a depository for registration by March 1, 2014. After the expiry of that period, bearer shares may be registered only if the affected shareholder presents a decision of the Court of Justice according to which the shareholder is the rightful owner of the bearer shares. After March 2024, all bearer shares not yet registered are to be declared null and void by the company and no more rights shall be resulting from such shares.

920. Bearer securities of other entities (such as trust enterprises and trusts) which are connected to a membership or purchase right shall be destroyed or converted to registered securities by March 1, 2014. After the expiry of said period, no more rights may be claimed on the basis of such shares. The law provides that a register of certificates be established and maintained by the trustee "similar to the share register." It would be clearer if the law would refer to bearer securities of other entities, without further qualifications (as it is not fully clear whether the trusts certificates envisaged by Art. 928 PGR which can also grant the beneficiary with a creditor's right to the trust property, such as the right to participate in the income and the liquidation surplus, which are not "connected to a membership or purchase rights" would be covered).

Voting rights and transfer

921. The shareholders' rights arising from a bearer share may only be claimed if the share has been deposited with the depository and all information on the bearer shareholder has been registered. (Art. 326f). The custodian is also entitled to exercise voting rights, with or without instructions (which can be given from the shareholder or the board of directors).

922. The transfer bearer shares by the shareholder is subject to notification to the custodian, must include the last name and first name, the date of birth, the citizenship, and the residence or the business name and the registered office of the acquirer of the bearer share. The transfer of bearer shares becomes effective upon entry of the acquirer in the register (Art. 326h). If the custodian exercises the voting rights for the deposited bearer shares, he shall request instructions from the

bearer shareholder for casting votes prior to every general meeting. If instructions cannot be obtained in time, the custodian shall exercise the voting rights in accordance with a general instruction by the bearer shareholder. Only if no such instruction exists, the custodian shall follow the proposals of the board of directors (Art. 326g PGR).

923. Finally the custodian may surrender bearer shares only upon termination of the custodian's function, to the successor custodian; upon conversion of the bearer shares into registered shares according to the articles, to the company; or upon redemption, retraction, or amortisation of bearer shares, to the company (Art. 326e PGR).

Sanctions for noncompliance

924. Compliance with the duties as a custodian is verified as part of the annual audit or review requirement and confirmed by the person conducting the audit or the review (Art. 326i PGR). If deficits are discovered, the person conducting the audit or the review shall immediately transmit a report to the OJ. The OJ shall set a deadline and require the custodian to remedy the deficits. If the deficit is not remedied, the Court of Justice shall file a criminal complaint with the Court of Justice. There are other instances in which the OJ is required to immediately file a criminal complaint with the Court of Justice.[63]

925. There are sanctions for noncompliance[64] concerning the requirements of the custodian, but not for noncompliance with the obligation to deposit the shares and to appoint the custodian.

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[63] If it learns of one of the following circumstances:

1. issue of an incorrect confirmation of the deposit of bearer shares under Art. 326c;

2. unlawful surrender of bearer shares (Art. 326e); or

3. issue of an incorrect confirmation under Art. 326i, para. 1, or failure to make a report under Art. 326i, para. 2.

[64] On information from the Office of Justice, the Court of Justice may in line with § 66d SchlTPGR in noncontentious proceedings impose an administrative fine of up to 10,000 francs on anyone who as a custodian

- fails to fulfill the duty to keep the share register properly in accordance with Art. 326c Abs. 1 PGR; or

- issued a confirmation about deposit of bearer shares in accordance with Art. 326c Abs. 6 PGR; or

- surrenders bearer shares contrary to Art. 326e PGR; or who as the person who conducted the audit or the review, provides an incorrect confirmation pursuant to Art. 326i PGR or fails to transmit the report pursuant to Art. 326i, Abs. 2 PGR. This administrative fine may be repeatedly imposed until a lawful status is produced. If the perpetrator acts negligently, the administrative fine shall be up to 5,000 francs.

Legal and implementation issues

926. The introduction of an immobilisation and registration system is a positive step forward. However there are some legal and implementation challenges to this approach.

927. First, as noted earlier the immobilisation and registration requirements may not always result in the identification of beneficial owners, as it only ensures, safe the exceptions noted, that existing bearer shares are converted into nominal shares. In other words, the problems in relation to nominal shares still remain—that a person could be a nominee shareholder, that a legal entity may hold nominal shares, etc. There are some mitigating factors that are aimed at ensuring that beneficial ownership information is obtained, indirectly, through the DDA requirements. However, the custodians are not in all cases subject to DDA, as noted earlier: in the domestic context, Art. 326(b)(2)(2) grants persons that are not within the scope of the DDA to act as custodians under certain situations. Such persons would thus also not have to identify and verify the BO. Another issue is that the new requirements do not explicitly prohibit the issuance of new shares: the requirement to deposit concerns only bearer shares which were issued prior to entry into force of the Act (March 1, 2013). Authorities are of the view that new bearer shares would follow the same regime, but it is not clear how, since the law is silent on this. They stated that for companies founded prior to March 1, 2013 the new provisions are applicable at the latest after the end of the transitional period (March 1, 2014).Other mitigating factors include requiring all payments by the company to the shareholder to be made to the registered account in the circumstances mentioned under Art. 326b, para. 2(2) and (3). The duration of the transitional regime (10 years) before completely phasing out bearer shares is too long.

Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions) (c. 33.4):

928. FIs only have access to the information that is publicly available in the CR or deposited with the OJ (in the later, they have to demonstrate a legitimate interest). Other than through the CDD process (with the limitations described under R.5) financial Institutions have no other access to beneficial ownership information.

Effective Implementation

929. Liechtenstein has a very liberal regime for creating legal entities, professionals who specialise in the creation of legal structures (some of them so complex that it is objectively challenging to follow the trail until the ultimate beneficial owner) and a favorable tax regime: these factors have made Liechtenstein attractive for the incorporation and registration of legal entities.

930. The table below provides the total number of registered/deposited entities, broken down per type of entity as of December 31, 2012 (also showing the figures of 2011 and new entries/deletion):

Legal form	By 12/31/2011	New entries	Deletions	By 12/31/2012

Sole trader	614	30	100	544
Collective partnership (*Kollektivgesellschaft*)	19	1	0	20
Joint Stock Company (AG)	6,573	266	583	6,256
Limited liability company (GmbH)	114	24	11	127
Cooperative	19	1	2	18
Commercial or noncommercial association	232	26	4	254
Registered foundation (*Stiftung*)	1,806	110	107	1,809
Limited partnership (*Kommanditgesellschaft*)	18	3	0	21
Limited partnership with share capital (*KomAG*)	0	0	0	0
Registered trust (*eingetragene Treuhänderschaft*)	2,764	212	310	2,666
Establishment (*Anstalt*)	11,486	222	1125	10,583
European joint-stock company (SE)	5	0	0	5
European economic interest association (EWIV)	0	1	0	1
Trust Enterprise (Trust reg.)	2,018	15	222	1,811

European Cooperative	1	0	0	1
Subsidiary of a enterprise with domicile within EEA	5	4	0	9
Subsidiary of a enterprise with domicile outside of EEA	95	3	3	95
New deposited foundations[65]	32,425	534	4,144	28,815
Deposited trust	197	3	29	171
Total all legal entities	**58,391**	**1,455**	**6,640**	**53,206**

931. The number of registered or otherwise deposited entities is quite high, although there has been a decrease, since 2011. In the authorities' views, this is mainly attributed to Liechtenstein's having signed several agreements concerning the exchange of information on tax matters with the U.S. and the EU and on its greater transparency. There have certainly been significant improvements on this front from the previous assessment, including with regard to R.33. There are however still significant challenges to the effective implementation of this recommendation and some inherent vulnerabilities and weaknesses in the system to prevent the unlawful use of legal persons by money launderers. Authorities have identified, and assessors concur with this finding, the creation of complex legal structures as posing a risk.

932. As mentioned at the outset of the analysis, the system in place in Liechtenstein to prevent the unlawful use of legal person relies mainly on the CDD obligations, to which TCSPs are subject, and it is complemented by powers of competent authorities to access or compel that information.

933. The real capacity of TCSP to implement effectively CDD requirements and be able to obtain, verify, and retain accurate and adequate information about beneficial owners is of paramount importance, as authorities are able to obtain adequate and accurate information on beneficial ownership information only if TCSP are implementing effectively CDD requirements (since the information subject to deposit and registration does not very often contain information on beneficial ownership or beneficiaries).

934. The analysis of R.12 reveals an uneven and at times unsatisfactory level of implementation of CDD-related requirements, with TCSPs relying heavily on introducers. As noted in other sections

[65] These are the nonregistered foundations (pursuant to Art. 552, para 19 PGR).

of the report, this is particularly critical when domestic TCSPs are dealing with foreign introducers, such as other trustees or lawyers, as they may rely on declarations from such introducers on beneficial owners, which may be mistaken or inaccurate. This in turn could mean that the information held by Liechtenstein trustees could be inaccurate. TCSPs are only subject to an inspection every three years (unless there is reason to impose a more frequent cycle), which may not enable supervisory authorities to properly check that CDD requirements are effectively implemented. More in general, assessors believe the whole sector of TCSPs to be among the riskiest in Liechtenstein.

935. The authorities indicate that the DDA information powers give them the power to access this information, and they have done so. However, such a power has not been exercised outside the supervisory functions of the FMA. The authorities also believe that the DDA gives them the right to pass the beneficial ownership information to other domestic authorities. However, the contradictions in the law, noted in other sections of this report may also result in a challenge. The issue has not been tested in court. With regard to prosecutors and law enforcement authorities, the legal current legal system is not the most effective in ensuring access to beneficial owner information: the analysis under R.3 notes that a vulnerability remains in the restriction of Art. 98a, which does not allow access to documents held, inter alia, by trustees (as well as the broad definition of privilege, which goes beyond proceedings and extends to auditors).

936. There are also elements of risks in the 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 (use of agents to establish these entities, identification of beneficial owner and beneficiaries in bylaws that are not subject to registration or deposit with the OJ and may be not always maintained by TCSP, especially in the case of foreign introducers).

937. For the reasons explained above, there is an inherent risk in this model that beneficial ownership information is not always accurate or adequate, or accessible by the authorities on a timely basis. The overall legal and implementation issues noted above affect the effectiveness of the measures Liechtenstein relies upon to prevent the unlawful use of legal persons by money launderers.

6.1.2. Recommendations and Comments

938. Authorities should:

- Reconsider the actual system of access to beneficial owner information (which relies on DNFBPs and FMA); in particular amend the law so that it clarifies that supervisory powers are not restricted to the fulfilment of FMA’s supervisory function;

- Subject “deposited” foundations to the same registration requirements as “registered” foundations;

- Require nominee shareholders and directors to disclose the identity of their nominator to the company;
- Require the custodian of bearer shares, in all instances, to be a licensed professional, resident in Liechtenstein and always subject to the DDA;
- Increase amount of sanctions for noncompliance with registration/notification requirements; and
- Increase the number of inspections by OJ to check compliance of registration/notification requirements.

6.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• The system in place does not ensure adequate transparency on beneficial ownership of legal persons; • 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; • Powers of FMA to access information restricted to supervisory functions; • Measures in place for bearer shares are not adequate and commensurate to risk of ML; **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 OJ.

6.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34 －rated PC in the 2007 MER)

6.2.1. Description and Analysis

Summary of 2007 MER factors underlying ratings, recommendations and progress since the last MER

939. The factors underlying the MER rating of PC were that the definition of beneficial owner did not extend to the beneficiary with no economic right to trust assets, the absence of any obligation on intermediaries to verify beneficial ownership information; and the absence of any legal obligation on private trustees to obtain, verify and record beneficial ownership information.

940. The DDA and DDO now address some of the comments made in the 2008 MER report as follows:

- The definition of beneficial owner now extends to those with control over a trust (Art. 3 of the DDO);
- There is an obligation to obtain (Art. 7, para. 1 DDA), verify (Art. 7, para 2 DDA) and maintain (Art. 20 DDA) information on the natural person that ultimately exercises effective control over a legal arrangement;
- intermediaries are required by law to verify beneficial ownership information (Art. 7, para. DDA);
- There is now an obligation on intermediaries to obtain, verify and record the individual who exercises ultimate control over a trust (Art. 3, DDO); and
- There are no changes with respect to private trustees.

Legal Framework:

- Law on Persons and Companies 1926 (PGR) Arts. 897–932a;
- Law on Professional Trustees (PTA);
- Due Diligence Act (DDA);
- Due Diligence Ordnance (DDO).

Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):

941. Liechtenstein's PGR recognises the concept of both an express trust (namely a trust created voluntarily) and an implied trust (where a person receives property in his or her own name, but held for the benefit of a third party) (Art. 899, PGR). The PGR also provides for a trust enterprise (Art. 932a), which is an undertaking pursuing economic or other objectives and operated by one or more trustees although trusts formed for other purposes may also adopt this form (Art. 932a PGR). Trust enterprises can be with or without legal personality (Art. 932a, para. 1). Trust enterprises have many of the characteristics of companies, including the concept of limited liability (Art. 932a, para. 3) and the ability to create securities that represent a beneficial interest and give voting rights (Art. 932a PGR for example, paras. 80, 102, and 114). Such securities could, in the past, be issued in bearer form (Art. p32a, para. 102 PGR) but are covered by the new provisions about immobilisation of bearer shares (Art. 2 transitional provisions; LGBl. 2013 Nr. 67). Trust enterprises have therefore not been allowed to issue bearer shares since the new regulations came into force March 1, 2013). Pursuant to Art. 2 of the transitional provisions bearer securities of all legal entities and trusts shall be converted to registered securities by March 1, 2014. A trust enterprise can be changed into another legal entity at the discretion of the trustees (Art. 932a, para.

166 PGR). Trust enterprises with legal personality are legal entities and not considered further in this section (see Recommendation 33).

942. No trust enterprise without legal personality has ever been formed. The structure is not considered further.

943. Liechtenstein has been a party to the Hague convention on the Recognition of Trusts since 2006. This provides that Liechtenstein shall recognise a trust formed under the laws of a foreign country which is also a party to the convention. A trust may be created in Liechtenstein that is subject to a foreign law—and this is discussed further below.

944. The measures designed to prevent the unlawful use of legal arrangements are twofold: an obligation to register (or deposit the trust deed) and an obligation on the provider of trust services to conduct due diligence on their contracting party as well as to understand who the beneficiary or controller of a legal arrangement may be.

Central registration

945. Trusts formed under Liechtenstein law (Arts. 900–902 PGR) must be recorded in the Public Register if:

- At least one trustee is resident or domiciled in Liechtenstein; and
- The trust is created for more than 12 months;

unless

- The property in the trust (and the trust itself) is registered in another public register such as the Land Register, the Patent Register, or similar, in which case, the obligation to register may be waived (Art. 901, PGR); or
- The trust deed (or a certified copy) has been deposited with the office of the Public Register within 12 months of the formation of a trust.

946. If the trust deed is deposited, then any amendment to the trust deed must also be deposited in the same way (Art. 902 PGR). Anyone wishing to rely on the registration at any other registry would need to seek the permission of the Office of the Public Registry. This permission has not been given, and the Office says that it would not be as it would have an effect on the ability of the authorities to tax the trust income and assets.

947. Where the trust deed is not deposited, an application for registration must include the name of the trust, the date of formation, the duration of the trust, and the name of the trustee. Any changes to this information must also be registered (Art. 900 PGR). There is no requirement that beneficiaries should be recorded unless they are in the trust deed.

948. The information contained in the register itself is publicly available. Documents that are deposited, such as the trust deeds are not available to the public (except for the person depositing

the document and their universal successors), but the Office of the Registry will confirm the existence of a trust if asked. Disclosure of the identity of the representative or the person authorised to accept service may be made to domestic criminal prosecution authorities, the FIU and the FMA (Art. 955a PGR). Files of registered trusts are accessible only upon proof of a legitimate interest.

949. The Commercial Registry will not necessarily hold details of beneficiaries. Where a trust deed is deposited (which is the exception rather than the rule), there will be details of at least one beneficiary (since a trust must have at least one), but, in the case of trusts where the trustees have discretion to appoint further beneficiaries, the trust deed will not necessarily include a comprehensive list of all beneficiaries. Any information about beneficiaries in the trust deed would not be available to the public or financial institutions.

950. Anyone who does not fulfill his duty to enter in the Commercial Registry, the Office of Justice shall, indicating the provisions and threat of an administrative penalty, call upon the party obligated to apply for the necessary entry within 14 days (Art. 967, Abs. 1 PGR). Moreover, if a trust was not registered or deposited, the court would not accept jurisdiction in the event of a dispute between the parties. A settlor giving assets to a trustee would have to take the risk that the trustee would take the assets and not return them or use them as the settlor wished. While these provisions would not necessarily be conclusive, they would only place Liechtenstein in the same position as other jurisdictions that do not require trusts to be registered.

951. The use of trusts established under Liechtenstein law by Liechtenstein professional trustees is not as extensive as that of some other legal entities, such as foundations or *anstalten*. Moreover, many more trusts are registered than are deposited. This is shown by the following table showing legal arrangements at the end of 2012:

Legal Entity	Total
Registered trust	2,666
Deposited trust	171

Source: Office of Justice

952. Trusts that are formed under foreign law are recognised by Liechtenstein law and would be subject to Liechtenstein law under Art. 931 PGR. This states that as far as necessary in the individual case the relationship between the settlor, trustee, and beneficiaries is subject to the trust regulations of the foreign law which must be included in detail in the trust instrument, and that the relationship between the trust and third parties shall be subject to Liechtenstein law. Moreover, the law requires that a mandatory court of arbitration shall decide in disputes between settlor, trustee, and beneficiary. The Office of Justice has stated that this means it would require registration, although there is no requirement to that effect, unless one of the trustees is resident in Liechtenstein. A trust pursuant to foreign law may be created in Liechtenstein, but if this trust is neither registered nor deposited in Liechtenstein nor has a Liechtenstein trustee, it is not a Liechtenstein trust.

953. The Professional Trustees Act (PTA) distinguishes between professional and other trustees. Art. 1b, para. 1 states that practicing the profession of a trustee requires a license by the FMA. Action on a professional basis means an activity that is carried out independently, and for payment or if the profit-making intent is to be concluded from the frequency of the activity or other reasons. This very broad concept was also confirmed in a ruling by the Liechtenstein Court of Appeal.

954. It would be highly unusual for a private person to create a trust because trusts are not widely used in Liechtenstein except by professional trustees. If a private person were to seek to register a trust, the Office of Justice has stated that they would inform the FMA and would require the registration of a representative as well as proof of registration with the Tax Authority. The Office of Justice also stated that private registration has not yet occurred.

955. The PTA stipulates (Art. 7, para. 1, letts. a and b) that only professional trustees licensed by the FMA under the PTA may undertake trustee activity on a professional basis. Trustee activity is not defined, but a definition is implied by Art. 7, which describes the activities a professional trustee license holder may perform and includes forming trusteeships for third parties and acting as a trustee. There is no explicit requirement that administering a trust should require a license, although this may be implied by the inclusion of the term "related interventions with authorities and administrative officers." Professional trustees and trust companies licensed by the FMA under the PTA (that form trustee activities, undertake certain administrative functions and give tax counseling) are subject to the DDA under Art. 3, para. 1, lett. k.

956. Trustees who are not licensed as professionals are not subject to due diligence requirements. Moreover, since there is no requirement to include all the potential persons who might be beneficial owners or the beneficiaries in the trust deed or as part of the registration process, for trusts operated by private trustees, there is no mechanism for establishing the beneficial owner beyond seeking the information from the private trustee—who is not obliged to hold it.

Requiring trust service providers to obtain, verify, and retain records of the details of the trust

957. The second main pillar of the defenses against abuse of trusts is the requirement that professional trust providers should identify, verify and maintain records of the beneficial owner. According to DDA, Art. 3, para. 1, lett. k, Professional Trustees and trust companies that undertake activities specified in PTA (Art. 7, para. 1, lett. a, b, e, or f, or para. 2) are required by the DDA, Art. 7, paras. 1–3, to identify and verify the beneficial owner of a trust. In respect of trusts, the beneficial owner is defined in DDO, Art. 3, para. 1, lett. b to cover:

- Those named beneficiaries who are the beneficiaries of 25 percent or more of the assets of the trust;

- Where there are not named beneficiaries, those natural persons, or group of persons in whose interests a trust was mainly established;

- Those natural persons who ultimately exercise direct or indirect control over the assets of the trust; and

- Those with the power to dispose of the assets of the trust and to amend the beneficiaries, (which would include the trustees).

958. DDO Art. 3, para. 2 gives further detail on the concept of control, so that it covers:

- Those able to dispose of the assets of the trust or amend the list of beneficiaries (which would include the trustees); and

- Those able to influence the exercise of the control powers.

959. As noted earlier, this detailed definition of beneficial owner in the DDO does not include the settlor unless the settlor is able to influence the exercise of control powers (Art. 3, para. 1, lett. b DDO). It would appear from discussions with the private sector that the notion of control is taken very literally, and the settlor would only be regarded as a controller if he or she had rights to exercise control included in the trust deed. In practice, a settlor might well not be given any such explicit powers but could be in a position to exercise some influence in practice.

960. Moreover, the definition may not catch a beneficiary who had a right to income, rather than assets of a trust.

961. The definition also excludes beneficiaries who have a right to less than 25 percent of assets or who may not be named in the trust deed but receive payments from time to time on a discretionary basis. It also excludes discretionary trusts, where it is left entirely to the discretion of the trustee to determine the beneficiaries. Private sector representatives claimed that it would be normal to identify beneficiaries who owned 20 percent of a trust but there remains vulnerability that a trust with a substantial number of beneficiaries would not have any single beneficiary qualifying as a beneficial owner.

962. It is recognised that the authorities have followed the approach in the third EU ML Directive, but the assessors suggest that these deficiencies should be remedied by amending the definition of beneficial owner in the DDO to include the settlor and by requiring due diligence to be conducted on any person who receives a payment as a beneficiary (subject to a small *de minimis* exception if necessary).

963. Professional trustees and trust companies (but not private trustees) are subject to the other provisions of the DDA and DDO as described elsewhere in this report, that impose due diligence, monitoring, record keeping, control and training requirements. They are also subject to the obligation to report. However, there remains no obligation on private trustees to identify or verify beneficial ownership information. Although the authorities consider that there are no private trustees, this remains a theoretical risk that could be exploited.

964. Art. 928 PGR provides that trusts may issue certificates that demonstrate a beneficial interest in a trust and that such certificates may be transferable. The law states that the trustee must keep a register of these certificates unless the trust deed provides to the contrary. These certificates can be issued in bearer form. As mentioned under the analysis of R.33, Liechtenstein recently introduced a reform of bearer shares and other titles that can be issued in bearer form. Bearer securities of

other entities (such as trust enterprises and trusts) shall be destroyed or converted to registered securities by March 1, 2014. After the expiry of said period, no more rights may be claimed on the basis of such shares. The authorities have stated that the trust certificates envisaged by Art. 928 PGR are also covered by these new provisions. However, the trust certificates can also grant the beneficiary with a creditor's right to the trust property, such as the right to participate in the income and the liquidation surplus, and these rights are not "connected to a membership or purchase rights." The authorities have stated that all bearer securities of trusts are connected with membership or purchase rights and so are covered by the new provisions.

965. Although there is an obligation on professional trustees to obtain beneficial ownership information, there is no obligation on beneficiaries or settlors to provide it. It would be mandatory for the Professional Trustees to refuse to make payments without such due diligence. However, it may be possible for private trustees (if there were any) to make such payments (or foreign trustees).

966. The Office of Justice considers that there are virtually no private trustees for the reasons given above and, as noted above, has stated that they would inform the FMA. It would be safer to agree to a monitoring policy with the Office of Justice so as to be sure that any private trustees were known in future to the FMA and the Office of Justice and for the authorities to satisfy themselves that their understanding concerning the minimal number of private trustees at present is correct. This would enable them to estimate the risks arising from the exclusion from the due diligence obligations.

Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):

967. The FMA is responsible for supervising the AML/CFT obligations of professional trustees and trust companies (FMAA Art. 3, para. 1, 273 and L).[66] The DDA gives the FMA power to obtain information from those it supervises. Art. 28, para. 4 gives the FMA the power to demand from persons subject to due diligence requirements (i.e. including professional trustees and trust companies) any information and records it requires to fulfill its supervisory activities for the purposes of the Act. Since professional trustees are required to keep due diligence information, this power could be used to obtain that information. Under DDA Art. 28, para. 1, letts. b and c, the FMA can carry out inspections and extraordinary inspections, and this could use those inspections to verify that information was available and complete.

968. As noted in the analysis of R.33, this power is restricted to the FMA's supervisory functions. Authorities have demonstrated that, in that context, they can compel information subject to confidentiality provisions, including in the case of trustees. Despite Art. 11 of the PTA which imposes an absolute duty of confidentiality on professional trustees with respect to any facts learned in the course of their business where confidentiality is in the interests of the client, the Supreme Administrative Courts has ruled that the DDA prevails on those confidentiality provisions. However, outside the context of the supervisory function, assessors have reservations that the DDA could be used to have access to this information. There are no cases in which this power has been used outside the supervisory function.

969. Despite significant efforts to maintain it, Liechtenstein has been obliged by EEA rules on the freedom to provide services to remove the requirement that, in the case of a foreign trustee, a co-trustee should be resident in Liechtenstein. The licensing rules would still apply, so any foreign trustee of a Liechtenstein registered trust who conducted business on a professional basis would need to be licensed. Foreign trustees are not subject to the obligation under Art. 28(5) DDO to store due diligence files at a location within Liechtenstein. However, the authorities have stated that as soon as a foreign trustee requested an official confirmation by the Commercial Register with respect to the registration of the trust, the Office of the Registry would, in practice apply Art. 239 PGR and require the trustee to appoint a permanent domestic resident who is citizen of an EEA member state in order to represent the entity to the authorities as a representative. According to the authorities this person would be subject to the DDA pursuant to Art. 3(1)(r) DDA and accordingly required to store the due diligence files at a location within Liechtenstein that is accessible at any time (Art. 28(5) DDO).

970. In addition, Art. 923, Abs. 1 PGR has to be mentioned pursuant to which the trustee (including a foreign trustee) is required to draw up an inventory of the trust assets in accordance with Art. 1045, para. 3 PGR and to revise it annually. In particular, the trustee is required to ensure that all records are available without delay at the registered office in Liechtenstein.

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[66] This is the letter "l" and not the number 1.

Additional Element—Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions) (c. 34.3):

971. FIs only have access to the Commercial Registry and any information that is included on the Registery itself. The Office of Justice, which is responsible for the Commercial Registry, would confirm the existence of a deposited trust. FIs have no other access to beneficial ownership information that is contained only in a trust deed.

Effective implementation

972. The system in place in Liechtenstein to prevent the unlawful use of trusts and other legal arrangement relies on the CDD obligations, to which TCSPs are subject, complemented by powers of competent authorities to access, or compel that information. Unlike many countries, Liechtenstein also allows the registration or the deposit of trusts. There are challenges to this approach.

973. The information subject to deposit and registration does not very often contain information on beneficial ownership or beneficiaries.

974. There is no doubt that there is an obligation on professional trustees to obtain beneficial ownership. Equally, there is no doubt that FIs routinely ask for this information when opening an account for trusts. The accuracy of the information depends on the diligence of the professional trustees. Such trustees are licensed and under an obligation to obtain and retain beneficial ownership information. However, as noted earlier, the definition of beneficial owner and beneficiary in the DDA does not always capture all beneficial owners (such as the settlor) or the beneficiaries in all instances. The analysis of Recommendation 12 reveals an uneven level of implementation of CDD-related requirements, with trustees relying heavily on introducers. This is particularly critical when domestic trustees are dealing with foreign introducers, such as other trustees or lawyers. They may rely on declarations from such introducers on beneficial owners, which may be mistaken or inaccurate. This in turn could mean that the information given by Liechtenstein trustees to FIs could be inaccurate. There is no prudential regulation of trust companies. A trust company is only obliged to have a single licensed professional trustee. Other members of its executive board, perhaps including the chief executive, are not required to be subject to a fit and proper test. Trust companies are only subject to an inspection every three years (unless there is reason to impose a more frequent cycle). Moreover in general, assessors believe the whole sector of TCSP and trustees to be among the riskiest in Liechtenstein.

975. The authorities believe that the DDA information powers give them the right to access information held by professional trustees, and they have done so, but not outside the context of the supervisory powers, in which the power, in the opinion of the assessors, could not be exercised. The authorities also believe that the DDA gives them the right to pass the beneficial ownership information to other domestic and foreign authorities. However, the contradictions in the law, noted in other sections of this report may also result in a challenge to this power. The issue has not been tested in court. With regard to prosecutors and law enforcement authorities, the analysis under Recommendation 3 notes issues of confidentiality and privilege that may hamper authorities' power to access or compel information concerning beneficial owners.

976. For the reasons explained above, there is an inherent risk therefore, that beneficial ownership information is not always accurate or adequate, or accessible by the authorities on a timely basis. While it is not possible to quantify exactly this risk, there are overall legal and implementation issues that affect the effectiveness of the measures Liechtenstein relies upon to prevent the unlawful use of legal arrangements by money launderers.

6.2.2. Recommendations

- The FMA and Public Registry should introduce a policy designed to ensure that any private trustee seeking to register a trust would be notified to the FMA, so that they can confirm that the person is not acting as a professional;

- Consider amending the definition of a beneficial owner in the context of a trust so as to include the settler and any beneficiary who receives a payment (even if that due diligence cannot be undertaken until a payment is about to be made);

- Amend the law so that it clarifies that supervisory powers can be used to obtain information for the purposes of enforcing the law and for disclosure to other authorities, both domestic and foreign;

- Clarify that the reform of bearer shares extends to Art. 928 bearer certificates in all instances; and

- Introduce a full prudential regulatory regime for trust companies that would impose a fit and proper test on all executives and owners of trust companies (as is currently the authorities' intention).

6.2.3. Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**LC**	• Restrictive legal framework concerning the FMA's access to beneficial ownership information; **<u>Effectiveness</u>** • The issues noted under Recommendations 12, the three year inspection cycle affect, 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.

6.3. Nonprofit Organisations (SR.VIII—rated PC in the 2007 MER)

Summary of 2007 MER Factors Underlying the Ratings and Recommendations and Progress Since the Last MER

977. In the previous assessment report the evaluators noted an absence of a review of laws and regulations regulating nonprofit organisations (NPOs) and insufficient outreach to the NPO sector on FT risks.

978. Since the last round, the provisions in the PGR dealing with NPOs were updated to strengthen the responsibility of the founder, enhance the rules dealing with the preservation of a foundation, improve the rules on foundation governance and re-organise the system for the regulation and supervision of foundations.

6.3.1. Description and Analysis

Legal Framework:

- Law on Persons and Companies of 20 January 1926 (PGR);
- Foundation Law Ordinance, StRV, LGBI. 2009 No. 114 (FLO);
- Tax Act, LGBI. 2010, No. 340 (TA);
- Tax Ordinance, LGBI 2010 No. 437 (TO).

Overview

979. The legal framework regulating NPOs is mainly provided for under the PGR. The provisions in the PGR dealing with NPOs were updated through a series of amendments dated June 26, 2008, which entered into force on April 1, 2009.

980. The TA and the TO contain provisions dealing with the tax exempt status of certain foundations.

981. NPOs in Liechtenstein primarily take the form of foundations and associations set up for a common-benefit purpose. Common-benefit entities may not conduct commercial activities, except for those activities which have a non-commercial purpose.

982. A definition of ‘common-benefit’ purpose is provided under Art. 107, para. 4, lett. a) of the PGR:

Where the Act refers to nonprofit making (common-benefit) or charitable purposes, this shall include such purposes the fulfillment of which is of benefit to the general public. In particular, there is deemed to be a benefit to the general public if the activity serves the common good in a charitable, religious, humanitarian, scientific, cultural, moral, sporting or ecological sense, even if only a specific category of persons benefits from the activity.

983. Any legal entity governed by the PGR (foundation, association, establishment, limited liability company, and trust enterprise) may be set up for a common-benefit purpose. To date, only foundations and associations have been set up for such purpose. It is to be noted that all legal entities set up in Liechtenstein that are not commercially active are required to appoint at least one director who is a citizen of the EEA and is in possession of a professional trustee license or an employee of a trustee with a special qualification certificate. As a result, the director of a legal entity set up for a common-benefit purpose is required to conduct CDD on the person setting up the legal entity and the beneficial owners, where the two are different, in line with the requirements set out under the DDA.

984. Foundations set up for a common-benefit purpose are supervised by the Foundation Supervision Authority (FSA), which was set up in April 2009 as a division within the Office of Land and Public Registration (Office of Justice). The responsibilities and competences of the FSA are set out under the FLO. The FSA comprises a head of division, two legal officers, and an administrative officer. As of December 31, 2012, there were 1,169 common-benefit foundations under the supervision of the FSA. Establishments with a common-benefit purpose would also be subject to the supervision of the FSA. However, to date, no establishments have been set up for such purpose.

985. Associations are not subject to any supervision, since, as stated by authorities, associations are formed by a group of members, who in practice oversee the activities of the entity themselves. Foundations and establishments are subject to FSA supervision since there are no beneficiaries that are in position to ensure compliance with the foundation or establishment deed.

Review of Adequacy of Laws and Regulations of NPOs (c. VIII.1):

986. The laws regulating NPOs were reviewed in June 2008 with the express purpose of strengthening the responsibility of the founder, enhancing the rules dealing with the preservation of a foundation, improving the rules on foundation governance and re-organising the system for the regulation and supervision of foundations. See also analysis of Recommendation 33.

987. The process for the revision of the laws regulating NPOs involved the private sector (represented by members of the trustees, lawyers, and banking association) and representatives of the courts. The Liechtenstein government instructed an Austrian and a Swiss university professor to draft the first set of amendments. The draft law was subject to consultation which involved also the FMA and the FIU. After the new legislation was adopted by the Liechtenstein Parliament, an information campaign was organised to raise awareness.

988. The amendments were not preceded by a review to understand the activities, size, and other relevant features of NPOs in order to determine the features and types of organisations that are at risk of being misused for FT.

989. The FSA, law enforcement authorities, and the FIU noted that they have never identified a case where an NPO was found be linked to FT. Additionally, from information available to the authorities, it is clear that Liechtenstein NPOs have never operated in certain geographical locations which are considered to pose a high FT risk.

990. No specific reviews have been undertaken to assess new information on the sector's potential vulnerabilities.

Outreach to the NPO Sector to Protect it From Terrorist Financing Abuse (c. VIII.2):

991. In April 2013, an information leaflet entitled "Risks of Terrorist Abuse" was distributed to the NPO sector by the FMA. The leaflet closely reflects the contents of a report issued by the FATF in 2008 on Terrorist Financing which refers to the misuse of NPOs for FT purposes. The leaflet is available on the website of the FSA and the FIU.

992. Although various training seminars were organised in 2012 by the FSA, together with the Association of Auditors, on the procedure to be followed when carrying out audits on common-benefit foundations, FT issues were not covered.

993. With a view to promoting transparency, accountability, integrity, and public confidence in the NPO sector, a presentation was provided by the FSA to the association of the NPOs in November 2012. However, no reference was made to FT issues related to the NPO sector.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c. VIII.3):

994. All common-benefit foundations are subject to the supervision of the FSA. Common-benefit associations are not subject to supervision.

995. The FSA is responsible ex officio for ensuring that the foundation assets are managed and utilised in accordance with the purpose of the foundation. In addition to the regularity audit, an effectiveness audit is also carried out to determine whether the activities of a foundation are conducted in accordance with its purpose.

996. An audit firm is appointed for every common-benefit foundation in special noncontentious civil proceedings for the purpose of conducting inspections on the foundation. Although the FSA may also carry out inspections itself, it relies to a large extent on the court-appointed audit firms. The audit firms are mandated to carry out full-scope annual inspections. The inspection reports prepared by the audit firms are submitted to the FSA.

997. The audit firm must be independent from the foundation and is under an obligation to notify the court and the FSA of any reasons which may impinge upon such independence. The FSA may demand the evidence necessary from the audit firm to assess the extent of the firm's independence from the foundation. The following persons may not be appointed by the court:

- members of another executive body of the foundation;
- persons with an employment relationship with the foundation;
- persons with close family connections with members of executive bodies of the foundation; or

- persons who are beneficiaries of the foundation.

998. The Liechtenstein Association of Auditors has issued binding directives on the independence and the performance of statutory audits in accordance with Art. 9b, para. 6 of the Auditors and Auditing Companies Act (WPRG) which entered into force in June 2011.

999. As an executive body of the foundation, the audit firm is under an obligation to verify once a year whether the foundation assets are being managed and utilised in accordance with the purpose of the foundation. The auditor not only ensures that the bookkeeping obligations of the foundation are being complied with, but also have to ensure that the business behavior of the administrators is in line with the stated activities of the foundation.

1000. Notwithstanding the extensive checks carried out by the auditors, none relate to FT issues.

1001. A report on the outcome of the audit must be submitted to the foundation council and the FSA. If no issues are identified by the auditors ("objections"), it is sufficient to provide confirmation that the foundation assets have been managed and utilised in accordance with the purpose of the foundation and in conformity with the provisions of the law and the foundation documents. Where the audit firm ascertains circumstances which may jeopardise the existence of the foundation, it must report to the FSA. The FSA may demand from the audit firm disclosure of all facts of which it has become aware during the course of its audit. The audit firm also informs the FSA of any particular findings which it deems necessary to bring to the attention of the FSA ("remarks").

1002. The FSA may, on request, dispense with the appointment of an audit firm, if the foundation only manages minor value assets or if this appears to be expedient for other reasons. The prerequisites for exemption from the obligation to appoint an audit firm are set out in the Foundation Law Ordinance.

1003. As of the end of 2012, 207 of the 1,169 common-benefit foundations subject to supervision were exempt from the obligation to appoint an audit firm. In these cases, the FSA as a rule exercises the right of inspection itself. In addition, it may obtain information from other administrative authorities and the courts and may through special non-contentious civil proceedings apply to the judge for the required orders, such as the control and dismissal of the executive bodies of the foundation, carrying out of special audits or cancellation of resolutions of executive bodies of the foundation.

1004. The FSA provided statistics in relation to the number of objections and remarks received from the auditors following an audit.

Year	Objection	Remarks
2009	41	21

2010	39	24
2011	25	18

1005. The main findings of the auditors were the following: failure to take action in particular circumstances against the deed of foundation, absence of board meetings, risky allocation of assets and outstanding loans.

1006. The main remarks related to situations where no assets were available to the foundation, no assets were spent by the foundation and pending court proceedings.

1007. Upon receipt of the objections, the FSA makes recommendations to the foundation to address the issues identified by the auditors. It was pointed out that the FSA does not have the power to sanction foundations. Sanctions may only be imposed through a judicial procedure. The FSA reported having instituted two judicial cases against two foundations for not implementing the recommendations made by the FSA.

Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):

1008. Common-benefit foundations are required to maintain information on the purpose and objectives of their stated activities. The foundation deed must provide for, inter alia, the intention of the founder to form the foundation and the purpose of the foundation, including the designation of beneficiaries.

1009. Information on the founder or his representative, the members of the foundation council, the audit authority and the representative is available to the public on the commercial register website (Art. 552, §19, para 3 PGR).

Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):

1010. It is not clear which sanctions apply to entities with a common-benefit purpose. The authorities referred to the sanctioning regime which applies under the DDA. It is the view of the assessors that the sanctioning regime under the DDA does not apply to NPOs.

Licensing or registration of NPOs and availability of this information (c. VIII.3.3):

1011. Common-benefit foundations are required to register with the Commercial Registry. The registration process involves the submission of a founding deed which should contain the following information:

- the intention of the founder to form the foundation;
- the purpose of the foundation, including the designation of tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or of the category of beneficiaries (unless the foundation is a common-benefit foundation or the beneficiaries are evident from the purpose of the foundation, or unless there is instead express reference to a supplementary foundation deed regulating this);

- regulations on the appointment, dismissal, terms of office, and nature of the management and power of representation of the foundation council;

- the name and place of residence, or corporate name and domicile, of the founder or, in the case of indirect representation, the name and place of residence, or corporate name and domicile, of the representative and express mention of the activity as indirect representative;

- notes on the supplementary formation deed, regulations or creation of executive bodies;

- the reservation of the right of revocation of the foundation or amendment of the foundation documents by the founder;

- the reservation of a right to amend the foundation deed or supplementary foundation deed by the foundation council or by another executive body; and

- the founder may draw up a supplementary foundation deed if such right is reserved. The founder or the foundation council or executive body of the foundation can issue internal directives for the execution of the foundation deed or the supplementary foundation deed. The founder loses all rights in relation to a foundation, unless the founding deed specifically reserves such rights. The foundation need to have a foundation council (foundation board) to manage the foundation assets. The founder may belong to the foundation board and/or be a beneficiary himself/herself.

1012. Common-benefit foundations acquire the right of legal personality upon registration. The entry in the Commercial Registry must contain information, which inter alia includes:

- the organisation and representation, stating the last name, first name, date of birth; nationality, and place of residence or registered office, or the corporate name and domicile of the members of the foundation council as well as the form of the signatory's power;

- the last name, first name, date of birth, nationality, and place of residence or registered office of the legal attorney, or the corporate name and domicile of the audit authority;

- the last name, first name, date of birth, nationality, and place of residence or registered office of the legal attorney, or corporate name and domicile of the representative.

1013. The information maintained by the Commercial Registry is available on its website and may be accessed by all competent authorities.

Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4):

1014. The general rules for accounting apply only to those foundations that, in addition to charitable activities undertake commercial or business activities (Art. 26 of the Law on Foundations). These are permitted only to pursue the statutory objectives of the foundations). In the case of all other foundations, the foundation council is required to maintain appropriate records of the financial circumstances of the foundation and keep documentary evidence presenting a

comprehensive account of the conduct of business and the movement of the foundation assets. In addition, the foundation council is required to maintain a schedule of assets indicating the asset position and the asset investments.

1015. In terms of Art. 1059 of the PGR foundations are required to retain business records, account records, and business correspondence for a period of ten years. The annual financial statements and the annual report are to be retained in writing and signed; the other business records, the account records, and the business correspondence may be maintained and retained in writing, electronically, or in a comparable manner, to the extent that conformity with the underlying business transactions is ensured and provided that such records can be made legible at any time.

Measures to ensure effective investigation and gathering of information (c. VIII.4):

1016. Please refer to the analysis of investigative powers under the Recommendation and the powers of authorities to access beneficial ownership information under Recommendation 33 and the issues noted in those sections.

Domestic cooperation, coordination and information sharing on NPOs (c. VIII.4.1):

1017. The co-ordination and co-operation mechanisms referred to under Recommendation 31 are available to exchange information on potential terrorist financing concerns related to NPOs.

Access to information on administration and management of NPOs during investigations (c. VIII.4.2):

1018. Law enforcement authorities may avail themselves of all information on the administration and management of a particular NPO in the course of an investigation.

Sharing of information, preventative actions and investigative expertise and capability, with respect NPOs suspected of being exploited for terrorist financing purposes (c. VIII.4.3):

1019. The coordination and cooperation mechanisms referred to under Recommendation 31 are available to ensure the prompt sharing of information among all relevant competent authorities in order to take preventive or investigative action when there are suspicions that a particular NPO is being exploited for FT purposes.

1020. The authorities referred to a case where the FIU received a SAR from a bank involving a foreign NPO wishing to open a bank account in Liechtenstein. The bank did not initiate the business relationship since media reports indicated that the NPO had been promoting terrorist ideologies in the country where it was set up. Nevertheless, the bank reported to the FIU. The authorities explained how the FIU and the Office of the Public Prosecutor cooperated in this matter to safeguard the financial system in Liechtenstein against misuse by a NPO for terrorist purposes. No charges were eventually brought against the NPO.

Responding to international requests regarding NPOs - points of contacts and procedures (c. VIII.5):

1021. The Mutual Legal Assistance framework is the channel through which international requests regarding NPOs would be processed.

Effective implementation

1022. Since the Third Round Evaluation, the authorities in Liechtenstein have taken a set of measures to address the deficiencies identified in the 2008 MER. The FSA was set up to supervise foundations with a common-benefit purpose and a system of annual inspections by independent auditors was instituted. While this is definitely a step in the right direction, more efforts should be done to target the threat of FT more specifically. The assessors noted that the supervisory oversight does not yet extend to the FT threat. Moreover, only foundations with a common-benefit purpose are subject to the supervision of the FSA. While the authorities observed that NPOs in Liechtenstein do not operate in locations which are generally associated with a higher risk of FT, no formal review has been carried out to understand the activities, size and other relevant features of the sector. The leaflet on the misuse of NPOs for FT purposes issued by the FSA should be supplemented by other outreach activities the increase the awareness of the sector.

6.3.2. Recommendations and Comments

- The authorities should conduct a 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;
- The authorities should conduct periodic re-assessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities;
- More outreach programs to the NPO sector should be considered with a view to protecting the sector from terrorist financing;
- Associations with a common-benefit purpose that account for (i) a significant portion of the financial resources under control of the sector and (ii) a substantial share of the sector's international activities should be subject to FSA supervision;
- Supervision of foundations by the FSA should also focus on FT issues; and
- Measures should be in place to sanction violations of oversight measures or rules by NPOs or persons acting on their behalf.

6.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• 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; • No periodic re-assessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities;

		• Not all common-benefit entities are subject to supervision; • No measures in place to sanction violations of oversight measures or rules by NPOs or persons acting on their behalf; **Effectiveness** • Supervision of foundations does not cover FT issues.

7. NATIONAL AND INTERNATIONAL COOPERATION

7.1. National Cooperation and Coordination (R.31 and R.32 rated C in the 2007 MER)

7.1.1. Description and Analysis

Summary of the 2007 MER factors underlying the ratings and recommendation and progress since the last MER

1023. Liechtenstein was found fully compliant on R.31 in the 2007 MER. The latest development in that area is the creation of the AML/CFT Working Group "PROTEGE" (acronym for "Proliferation/Terrorismusfinanzierung/Geldwäscherei") by government decision in January 2013, replacing the former coordination bodies.

Legal Framework:

- Government decision of January 15, 2013;
- Art. 25 LVG;
- Art. 36 DDA;
- Art. 9 FIU Act;
- Art. 10 and 53 CPC.

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):

1024. Following authorities participate as members in PROTEGE, the new central coordination body:

- The Director of the FIU (Chairman);
- The Financial Market Authority Liechtenstein;
- The Office for Foreign Affairs;
- The Office of Justice;

- The National Police;
- The Court of Justice;
- The Office of the Public Prosecutor;
- The Financial Intelligence Unit;
- The Office for International Financial Affairs;
- The Fiscal Authority.

1025. Responsibilities of the working group are:

- preparing strategy for combating ML, FT, and nonproliferation, based on an analysis of the risks and threats No formal strategy has been adopted, this exercise has just started and is ongoing;
- coordination of the implementation of that strategy;
- coordination of the implementation of the relevant international standards (FATF, MONEYVAL, EU Money Laundering Directives);
- preparation and organisation of the country assessments by MONEYVAL/IMF;
- coordination of the drafting of the relevant legal texts;
- coordination of specific cases involving several authorities and administrative offices;
- coordination of the implementation of international sanctions; and
- internal and external communication within its scope of activities.

1026. Furthermore the Prosecutor General, a Court Judge, the Director of FIU, the CEO of the FMA, the Head of the Criminal Police, and the Directors of the Foreign Office, the Tax Administration, and the Office for International Financial Affairs informally meet on a quarterly basis, to update on current criminological developments, not limited to ML or FT (ERFAG-Group).

1027. Operational cooperation is laid down and regulated in various Acts, such as Art. 25 LVG, Art. 36 DDA, Art. 6 and 9 FIU Act, and Art. 10 and 53 CPC, allowing for an exchange of information according to a due process. The authorities stated that no request was ever denied on legal grounds, although the information exchange is not unconditional and takes place within the limits set by their respective laws. See the discussion under R4 for issues related to access by some domestic authorities to information covered by financial secrecy, which affects the domestic exchange of such information.

1028. The exchange of strategic information between the FIU and the FMA in a systematic way has only started recently, with the FIU sharing information about SARs and the FMA sharing the list of banks that it is planning to inspect. The FIU and prosecution authorities meet regularly to exchange information on investigation generated by disseminated SARs.

Additional Element - Mechanisms for Consultation Between Competent Authorities and Regulated Institutions (c. 31.2):

1029. Consultation between competent authorities, the financial sector, and other sectors is mandatory for every regulation and law drafting. There is a practice that also guidance papers are disseminated for comments prior to publication. Also, the Chair of the AML/CFT Working Group regularly meets with the chairs of the professional associations to brief them on recent developments. The meetings with the professional associations are held about every two to three months, depending on the concrete needs. Topics discussed include the discussion of draft laws, guidance papers, strategic developments and related AML/CFT issues. The chair also attends the meetings where the prime minister invites all chairs of the professional associations.

Statistics (applying R.32):

1030. The AML/CFT Working Group is tasked to review the effectiveness of the countries' AML/CFT system, and to prepare a strategy for combating ML, FT, and nonproliferation, based on an analysis of the risks and threats. A draft report on the main vulnerabilities has been prepared is currently under review for preparation of the National Risk Assessment. Effectiveness issues are discussed also in the ERFAG group, PROTEGE and in the framework of the dialogue between government and the FIU (Art. 5 (1) ff. FIU Act).

Effective Implementation

1031. Due to its size, its small population, and the simple structure of the country, Liechtenstein does not experience the same coordination issues the way larger and complex jurisdictions do. The close relations between the various administrative and law enforcement authorities and their familiarity with each other are conducive to a flexible cooperative culture. The various laws define the boundaries of the information exchange, which is a daily practice. The FIU plays an important part, both at operational and coordination level. Its position as chair of the PROTEGE working group reflects its central role.

1032. The domestic operational cooperation is flexible, though not unlimited. Each authority has its confidentiality rules that need to be observed and can only be lifted according to the law. Within that framework there are some refraining factors, as highlighted in other sections of the report. The issues noted under Recommendation 4 with regard to financial secrecy may affect the effectiveness of the domestic exchange of information. Cooperation and exchange of information between the FMA and the FIU should be enhanced.

7.1.2. Recommendations and Comments

1033. The creation of the PROTEGE working group is an important step consolidating the ongoing work of organising a coordinated AML/CFT regime, addressing operational cooperation issues and preparing for the implementation of the new standards, including the national risk assessment.

7.1.3. Recommendations:

- Clarify the legal framework concerning financial secrecy provisions, as noted under Recommendation 4;

- Cooperation between the FMA and the FIU should be enhanced, particularly the exchange of information that can be used for the FMA to develop a fully fledged risk-based approach, and for the FIU to have a better understanding of the level of compliance with AML requirements by the entities subject to supervision from the FMA.

7.1.4. Compliance with Recommendation 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**LC**	• Issues of financial secrecy (noted under R.4) affect the effectiveness of domestic exchange of information; • Cooperation FMA/FIU needs enhancement.
R. 32	**C**	

7.2. The Conventions and UN Special Resolutions (R.35 and SR.I rated PC in the third round MER)

7.2.1. Description and Analysis

Summary of the 2007 MER factors underlying the ratings and recommendation and progress since the last MER

1034. The third round assessors criticised the nonratification of the Palermo Convention and recommended that the authorities ensure that all provisions of the Palermo and Vienna Conventions would be fully implemented, as well as all provisions of the United Nations International Convention for the Suppression of Financing of Terrorism. As for the implementation of the CFT Convention and relevant UNSCRs, this needed further refining to expressly cover the assets under the indirect control or ownership of terrorists, and to fully criminalise terrorism financing.

1035. Liechtenstein acceded to the Vienna Convention on March 9, 2007 (with reservations) and ratified the Palermo Convention on February 20, 2008 without reservations. It

implemented all relevant provisions of the Conventions, bar Art. 26 TOC. All relevant provisions of the FT Convention are implemented and the terrorism financing offense fully criminalised. The implementation of the procedural side of the UNSCR 1267 and 1373 has been improved.

Legal Framework:

1036. See tables below.

Ratification of AML Related UN Conventions (c. 35.1):

1037. Implementation of Vienna Convention (Arts. 3–11, 15, 17, and 19, c. 35.1), see also analysis under relevant recommendations:

	Articles	Legislative Provisions in
	3 Offenses and Sanctions	Article 165 PC (Criminal Code),
	4 Jurisdiction	Article 62–65 PC
	5 Confiscation	Article 20, 20b, 26 PC (Criminal Code), article 96, 97a, 249, 253 ff, 353ff CPC (Criminal Procedure Code), Art. 64 bis 67 MLA (Law on Mutual Legal Assistance in Criminal Matters; Mutual Legal Assistance Act)
	6 Extradition	Art. 10–49, 60–70 MLA, Art. 59–66 SIA
	7 Mutual Legal Assistance	Art. 50–59, 71–73 MLA, Art. 48–53 SIA
	8 Transfer of Proceedings	Art. 60, 74–76 MLA
	9 Other forms of co-operation and training	Various laws (Police Act, Art. 7 FIU Act, FMA Act etc), Schengen, Interpol, Trilateral Police Cooperation Treaty
	10 International Co-operation and Assistance for Transit states	No formal legal basis required. Practice.

	11 Controlled Delivery	Art. 23b Law on Police
	15 Commercial carriers	N/A[67]
	17 Illicit Traffic at sea	N/A [68]
	19 Use of mail	N/A[69]

1038. Implementation of CFT Convention (Arts. 2–18, c. 35.1 and c. I.1), see also analysis under relevant recommendations:

	2 Offenses	Art. 5 (1), 12, 15, 278d PC
	4 Criminalisation	Art. 278b, 278c, 278d PC
	5 Liability of legal persons	Art. 74a–74g PC, Art. 124 and 986 PGR (Persons and Companies Act)
	6 Justification for commission of offense	Art. 51 MLA
	7 (Jurisdiction)	Art. 62–64 PC
	8 (Measures for identification, detection, freezing, and seizure of funds)	Arts. 20, 20b, 278b, 278c, 278d PC, Arts. 96, 97a, 249, 253 ff, 353ff CPC
	9 (Investigations and the rights of the accused).	Art. 127ff CPC, Art. 28 MLA, Art. 36 Vienna Convention on Consular Relations
	10 (Extradition of nationals)	Art. 12 MLA, Art. 64 PC
	11 (Offenses which are extraditable)	Art. 11, 19, 20 23 MLA, Art. 63 SIA

[67] There are no airports in Liechtenstein.

[68] Liechtenstein is doubly landlocked.

[69] All mail goes first via Switzerland who is in charge of control as a result of the Customs Union.

	12 (Assistance to other states)	Arts. 50–59, 71–73 MLA
	13 (Refusal to assist in the case of a fiscal offense)	Arts. 15[70], 51 MLA, SIA
	14 (Refusal to assist in the case of a political offense)	Arts. 14[71], 51 MLA
	15 (No obligation if belief that prosecution based on race, nationality, political opinions, etc.)	Arts. 19, 51 MLA
	16 (Transfer of prisoners)	Arts. 54 MLA
	17 (Guarantee of fair treatment of persons in custody)	Art. 2a, 3 CPC, Art. 3 HRC
	18 (Measures to prohibit persons from encouraging, organising the commission of offenses and STRs, record keeping and CDD measures by FIs and other institutions carrying out financial transactions) and facilitating information exchange between agencies)	Art. 287d PC, Art, 2, 4, 5, 9, 10 DDA,
	19 Communication of outcomes to UN Secretary General	Case to case

1039. Implementation of Palermo Convention (Arts 5–7, 10–16, 18–20, 24–27, 29–31, and 34, c. 35.1), see also analysis under relevant recommendations:

	5 (Criminalisation of participation in an organised criminal group)	Art. 278, 278a PC

[70] Only impermissible in case of exclusive fiscal ground.

[71] Assistance allowed if the (serious) criminal character outweighs the political nature.

	6 (Criminalisation of laundering of the Proceeds of Crime)	Art. 165 PC
	7 (Measures to combat money laundering)	Due Diligence Act, Due Diligence Ordinance, Art. 24e National Police Act…
	8 (Criminalisation of corruption)	Art. 153, 302, 304–308 PC
	9 (Measures against corruption)	Art. 39, 40 Civil Servant Act
	10 (Liability of Legal persons)	Art. 74a–74g PC, Art. 124 and 986 PGR (Persons and Companies Act)
	11 (Prosecution Adjudication and sanction)	Art. 46, 57–58 PC
	12 (Confiscation and Seizure)	Art. 20, 20b, 26 PC (Criminal Code), Art. 96, 97a, 353ff CPC (Criminal Procedure Code)
	13 (International Cooperation for the purposes of confiscation)	Art. 50–59, 64–67, 71–73 MLA, Art. 20, 20b, 26, 64–65 PC
	14 (Disposal of confiscated proceeds of crime or property)	Art. 253a CPC, Art. 64(7) MLA
	15 (Jurisdiction)	Art. 62–65 PC
	16 (Extradition)	Art. 10–49, 68–70 MLA
	17 (Transfer of sentenced persons)	Art. 64–67, 76 MLA
	18 (Mutual Legal Assistance)	Art. 50–59, 71–73 MLA, Art. 195a stop
	19 (Joint Investigations)	Schengen, Interpol, Trilateral Police Cooperation Treaty

	20 (Special Investigative Techniques)	Art. 103–104c CPC
	21 (Transfer of Criminal Proceedings)	Art. 60, 74–76 MLA
	22 (Establishment of criminal record)	Art. 50 MLA
	23 (Criminalisation of obstruction of justice)	Art. 12, 223, 224, 225, 229, 269–273, 288, 289, 293, 295, 298–301 PC
	24 (Protection of witnesses)	Art. 119a CPC
	25 (Assistance and protection of victims)	Art. 31a–32a, 124 CPC,
	26 (Measures to enhance cooperation with law enforcement authorities)	Art. 41 PC (general clause on mitigating circumstances)
	27 (Law Enforcement cooperation)	Schengen, Interpol, Trilateral Police Cooperation Treaty
	28 (Collection, exchange and analysis of information on the nature of organised crime)	Schengen, Interpol, Trilateral Police Cooperation Treaty
	29 (Training and technical assistance)	Schengen, Interpol, Trilateral Police Cooperation Treaty
	30 (Other measures)	Schengen, Interpol, Trilateral Police Cooperation Treaty
	31 (Prevention)	DDA, FIU Act, e.a.
	34 (Implementation of the Convention)	Article 278, 278a PC

Implementation of UNSCRs relating to Prevention and Suppression of FT (c. I.2)

1040. See section 2.4 (SR.III).

Additional Element—Ratification or Implementation of Other relevant international conventions (c. 35.2):

1041. Liechtenstein has ratified the UN Convention Against Corruption on July 8, 2010 and ratified the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime on November 9, 2000, and the Protocol amending the European Convention on the Suppression of Terrorism on February 8, 2005.

Effective Implementation

1042. Liechtenstein has signed, ratified, or acceded to the UN AML/CFT Conventions. All relevant provisions of the Conventions are transposed in national law or otherwise covered. The deficiencies established in the implementation of Rec. 1, 3, 5, SR.II, and SR.IX, however, cascade into the evaluation of Rec. 35 and SR.I, including the effectiveness issues noted under those recommendations.

1043. With the adoption of the ISA, the legal framework for implementation of the UNSCR 1272 and especially UNSCR 1373, has been significantly improved and completed. There are still areas that need refining and specific procedures to be defined, as explained in section 2.4 (SR.III).

7.2.2. Recommendations and Comments

- The deficiencies noted on the implementation of the recommendations concerning seizure and confiscation measures, CDD, and the freezing regime of terrorist assets need to be addressed (see respective sections of the MER).

7.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	Implementation of Vienna/Palermo Convention: • Art. 98a CPC does not cover information gathering with some relevant categories, such as payment system providers, e-money institutions, insurance mediators, and DNFBPs; Implementation of UN International Convention for the Suppression of the Financing of Terrorism: • R.5-related issues (Art. 18.1.b of the Convention).
SR.I	**LC**	Implementation of UN International Convention for the Suppression of the Financing of Terrorism: • R5-related issues (Art. 18.1.b of the Convention); Implementation of UNSCRs: • Scope of application of ISA 2008 restricted in relation to UN Res. 1373; • No procedures in place for domestic designations.

7.3. Mutual Legal Assistance (R.36, SR.V rated PC in the third round MER)

7.3.1. Description and Analysis

Summary of the 2007 MER factors underlying the ratings and recommendation and progress since the last MER.

1044. The previous MER found that both, in ML and FT context, excessive delays were still possible by extensive means of appeal and criticised the absence of legal basis for Liechtenstein to give mutual legal assistance in matters of serious and organised fiscal fraud. Also, the legal deficiencies in the ML and FT offenses could obstruct MLA compliance with dual criminality ruled requests.

1045. The use of procedural delaying tactics was countered by the removal of one appelate instance (Supreme Court) on confirmation of the initial decision. VAT fraud is now explicitly included in the MLA regime. ML and FT deficiencies have been addressed.

Legal Framework:

- Mutual Legal Assistance Act of September 15, 2000 (MLA), as amended;
- European Convention on Mutual Assistance in Criminal Matters (ECMA, ETS 30);
- CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Money Laundering Convention—MLC, ETS 141;
- Schengen Implementation Agreement December 19, 2011.

Widest Possible Range of Mutual Assistance (c. 36.1):

1046. The Liechtenstein international cooperation regime is generally governed by the Law on International Mutual Assistance (*Rechtshilfegesetz*, MLA) and international conventions ratified by Liechtenstein. The MLA is based on the ECMA, ETS 30, and the MLC, ETS 141.

1047. On the primary condition of reciprocity, mutual legal assistance in criminal matters is granted according to Arts. 1 and 3, paras. 1 and 50 MLA on request by a foreign authority, including measures in relation to matters of prevention, seizure and confiscation, of extinction and registry of criminal records, of compensation for confinement and conviction, of clemency proceedings and in executor matters (Art. 50 MLA). As a rule the CPC is applicable in all mutual legal assistance matters (Art. 9.1 MLA).

1048. These measures include:

- the production, search, and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons (Art. 92, 96, and 98a CPC);

- the taking of evidence or statements (Art. 105 CPC);
- providing originals or copies of relevant documents and records as well as any other information and evidentiary items (Art. 52 MLA);
- servicing judicial documents (Art. 51, para. 3 and Art. 53 MLA);
- facilitating the voluntary repatriation of assets and documents; voluntary appearance of persons for the purpose of providing information or testimony to the requesting country (no formal legal basis required); and
- identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offenses, and assets of corresponding value (Art. 92, 96, 97a, 98a CPC; Arts. 64–67 MLA).

1049. These measures also apply on the basis of multilateral or bilateral agreements. Finally ad hoc assistance is also possible in other circumstances on the basis of reciprocity, subject to consultation of the Ministry of Justice (Art. 3, para 3 of the MLA).

Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):

1050. Most of the incoming requests are processed through the Ministry of Justice or are directly addressed to the court, particularly since the Schengen Agreement came into force for Liechtenstein on December 19, 2011. Only those requests that are not governed by the ECMA/Schengen Agreement or special bilateral treaties (e.g. Austria, Germany, Switzerland, or the U.S.) go through diplomatic channels,[72] although according to the authorities Liechtenstein does not make it a formal requirement.

1051. After a previous revision in 2000 (commented on in the third round MER) the MLA was again revised in 2009 (LGBl. 2009 No. 36), further streamlining the procedure and reducing the possibility of delaying tactics:

- As a rule, decisions of the Court of Justice can now only be appealed at the end of the mutual legal assistance proceedings (new Art. 58c MLA). As a result appeals against rulings ordering compulsory measures such as searches of premises or seizure can no longer be filed during the mutual legal assistance proceedings but only at the end, i.e. together with the appeal of the final ruling. Exception is made for rulings with an immediate and irreparable effect, particularly orders pursuant to Art. 97a of the Code of Criminal Procedure (equivalent and other seizure of enrichment), but even then the MLA request continues to be dealt with;

[72] Mainly from jurisdictions in Africa, Middle East, and Asia.

- The legal position of entitled parties, i.e. persons personally and directly affected by MLA request and having a legitimate interest (e.g. as holder of the account), and their right of appeal in mutual legal assistance proceedings is clearly defined (new Art. 58d MLA). If the decision of the investigating judge is confirmed on appeal, there is no longer the possibility for the defendant to address the Supreme Court (Arts. 238.3 and 240.1.4 CPC). Lodging an appeal with the Constitutional Court is still possible on fundamental right grounds, such as the right to property and a fair trial. If on the other hand the Court of Appeal rejects the decision, the Public Prosecutor can still address the Supreme Court;

- The service of court decisions on entitled parties residing abroad has been restricted (Art. 58b MLA), so that decisions are now only served if there is an address for service in Liechtenstein or if an address for service has been disclosed during the proceedings;

- Service of documents on legal persons and companies without legal personality that have been deleted or are without governing bodies is effected on the last governing body or representative of the legal person that has been deleted or is without a governing body (Art. 58b, para. 2 MLA);

- Art. 54a MLA creates the possibility of spontaneous transmission of information to foreign authorities (implementation of Art. 10 ML Convention);

- MLA Act also applies to civil forfeiture proceedings (Art. 50, para. 1a MLA);

- Under the simplified procedure for sending objects and documents under Art. 52, para. 5 MLA, the person concerned does not have to waive the rule of specialty;

- A Liechtenstein subject convicted in a final judgment abroad no longer has the right to grant consent to the transfer of enforcement of a sentence (Art. 64, para. 2 MLA); and

- No legal remedies are permissible against Liechtenstein requests for mutual legal assistance transmitted to a foreign state (Art. 77, para. 3 MLA).

1052. As a result statistics show a substantial reduction of the average duration of the MLA proceedings from 91 days in 2009 to 49 days in 2012 (verified by random checks).

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

1053. As before the MLA process is subordinated to the general principle of reciprocity (Art. 3 MLA). Specific and mandatory grounds for refusal are provided (Art. 51 MLA) when:

- the dual criminality condition is not met;

- the request relates to a criminal offense of a political, military, or fiscal nature (Arts. 14 and 15 MLA)[73] (except if the criminal character outweighs the political motivation (Art. 14.2 *in fine*);

- the request is based on proceedings that do not meet the basic principles of Arts. 3 and 6 of the European Convention on Human Rights (ECHR) (e.g. torture);

- the sentence or enforcement of preventive measures goes against the basic human rights (Art. 5 ECHR e.g., death penalty);

- the specific CPC conditions for confiscation or special investigative techniques (tapping, opening mail) have not been met; and

- the secrecy obligation cannot be lifted even by a Liechtenstein court decision (e.g., medical secret, lawyer's and auditor's legal privilege). Banking and other financial secrecy however does not fall under this category.

1054. The above refusal grounds are not exceptional compared with those in other jurisdictions and are generally recognised as acceptable as a rule. Art. 51 MLA is formulated in a strictly mandatory way, but still allows some flexibility and interpretation. The political alibi cannot stop the requested assistance as soon as the offense is particularly serious, which would be the case of financing of terrorism or other terrorist related acts. The fiscal alibi is only valid when it has an exclusive character. The mitigation of the prohibition for requests which might be argued as of a political nature is important in the context of the fight against serious criminality and terrorism. The protection of privileged information is a universally accepted rule, but does give opportunities for abuse.

Efficiency of Processes (c. 36.3):

1055. Any foreign legal assistance request usually follows the same procedure:

- the MLA request is addressed to the Office of Justice in the Ministry of Justice (as "Central Authority" according to the 1990 Strasbourg Convention), or directly to the judicial authorities;

- the request is passed to a judge (investigating magistrate) at the Court of Justice who, after a summary examination, decides whether or not the assistance should be granted;

- all MLA requests are copied to the Office of the Public Prosecutor for possible comments; and

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[73] See 36.4 below for fiscal exceptions.

- requests related to money laundering, predicate offenses, or FT are copied to the FIU (Art. 7.1 FIU Act).

1056. The ECMA and Art. 1 MLA allow for direct transmission of legal assistance requests in the cases provided in Art. 15.2 and 4 ECMA (urgency). In practice, the judicial authorities have in the past accepted directly MLA requests even when involving coercive measures. Direct transmission now also takes place between members of the Schengen Implementation Agreement.

1057. The court examines the request predominantly in the light of its admissibility, i.e., whether the basic legal conditions are met and no grounds for refusal exist (such as the dual criminality requirement for coercive actions and the fiscal exception—Art. 51 MLA). The court's examination is a marginal one, i.e., it does not go over the substance of the case (such as the evidentiary value of the facts), but it does look into the comprehensiveness of the request to assess whether it contains enough information to be able to comply in a meaningful way. Any refusal of the request can be subject of an appeal by the Office of the Public Prosecutor.

1058. If the court deems the request admissible it executes it by questioning witnesses (Art. 105 CPC), obtaining documents and bank records (also with coercive measures, if necessary—Arts. 96 and 98a CPC), or issuing a search warrant (Art. 92 CPC). Searches are conducted by the National Police Authority. Banking or professional secrecy (except in legal privilege circumstances) does not apply and all documents and items must be handed over to comply with the order (see also the issues noted under section 2.4.1).

1059. Once the legal assistance proceedings are concluded, the materials to be surrendered are transferred to the Ministry of Justice, which is responsible for forwarding them to the requesting foreign authority, directly or through diplomatic channels (mainly via the Liechtenstein Embassy in Berne). In cases of a direct transmission of the request, the answer to the request and the attachments may also be sent directly.

1060. The time needed to comply with an MLA request obviously depends on the complexity of the request. An overview of the MLA requests received between 2009 and 2012 shows that in most cases it takes between one and four months to execute (see 36.1.1). Some (high profile) cases however may take longer due to procedural complications and the high standard of proof required by the Liechtenstein Courts on the link between the assets and the predicate offense in seizure and confiscation related domestic procedures triggered by a MLA request.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

1061. In fiscal criminal matters the general prohibition still remains (Art. 15.2 and 51 MLA). There are however four exceptions, where MLA is granted notwithstanding the exclusively fiscal nature of the request:

- In accordance with the Mutual Legal Assistance Treaty (MLAT) with the U.S. of July 8, 2002, LGBl. 2003 No. 149. According to Art. 1, para. 4, mutual legal assistance including compulsory measures is permissible in cases of tax fraud. Tax fraud is defined as tax evasion committed by means of the intentional use of false, falsified, or incorrect business

records or other documents. The tax due, either as an absolute amount or in relation to an annual amount due, must be substantial;

- According to Art. 10 of the Savings Tax Agreement between Liechtenstein and the European Community, Liechtenstein undertakes to exchange information on conduct constituting tax fraud "or the like" under Liechtenstein law. In the implementing law (Savings Tax Act, ZBStG, LGBl. 2005 No. 112), Art. 20 specifies that the Court of Justice is responsible for dealing with requests under Art. 10 of the Agreement and that the provisions of the MLA Act apply to the proceedings;

- As part of the implementation of the Third EU Money Laundering Directive, LGBl. 2007 No. 189 inserted Art. 51 para. 1a into the MLA Act. Vis-à-vis EU states and in the case of VAT fraud and certain customs violations, mutual legal assistance is permissible if the offense is connected with damage to the budget of the European Communities, and the evaded tax, reduced customs duties, or other unlawful advantage exceeds CHF 75,000 (threshold clause); and

- With Liechtenstein's Schengen association and entry into force of the Schengen Agreement on December 19, 2011, Liechtenstein undertakes to provide mutual legal assistance in fiscal criminal matters to all Schengen states. In the case of indirect taxes, compulsory measures are permissible if the offense is tax fraud according to Art. 88 or qualified tax evasion according to Art. 89 of the VAT Act. Pursuant to this provision, VAT tax evasion is deemed qualified if it is committed under aggravating circumstances. Aggravating circumstances are enlisting one or more persons for VAT evasion and VAT evasion on a professional basis. Dealing in goods on which import duty is owed is also included according to Art. 90 VAT Act, if the underlying offense is tax fraud or qualified tax evasion. Additionally, in the field of indirect taxes relating to customs duty fraud and qualified tax evasion offenses, Swiss law is applicable in Liechtenstein (mineral oil tax, automobile tax, and customs duties) and mutual legal assistance including compulsory measures is allowed. In the case of direct taxes mutual legal assistance relating to search and seizure is generally limited to facts that constitute tax fraud under Liechtenstein tax law, the Schengen Agreement not being in force yet in the absence of ratification by all EU states."

1062. In case of MLA requests concerning mixed offenses (fiscal and others), legal assistance is given for the common criminal offense. In that case, the legal assistance results may be returned to the requesting authority, subject to a "reservation of specialty" that limits their use to the sole prosecution of the common offense.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

1063. Banking secrecy cannot be opposed to an MLA request. Firm jurisprudence is established, that banking secrecy can be waived in domestic and legal assistance criminal

proceedings for common offenses.[74] Banking secrecy is otherwise lifted by court order (Art. 98a, para. 1a CPC). The exception formulated in Art. 51, para. 1, no 1 MLA where it refers to the legal impediment on fiscal and political grounds (Arts. 14 and 15 MLA) cannot be interpreted as allowing a refusal of legal assistance on the grounds of banking secrecy (see 36.2). Arts. 96, 97, 97a, 98, and 98a CPC regulating seizure apply. Of particular interest, also in the context of MLA, are the disclosure obligations laid down by Art. 98a CPC in ML and FT matters to divulge all relevant data and documents on the identity and address of a business relation, nature of the business relationship, beneficial ownership, and related transactions or operations. This provision, however, does not apply to certain categories of persons and entities subjected to the preventive AML/CFT system, such as payment system providers, e-money institutions, insurance mediators, and DNFBPs. In that case, the judge applies the seizure provisions of Art. 96 CPC. A specific issue presents itself in respect of the legal privilege as an obstacle to the implementation of MLA requests to obtain specific information. Any potential abuse of his privilege is said to be countered by the Liechtenstein authorities with the presumption that the DNFB is acting in his capacity of financial intermediary or other capacity of a professional subjected to the DDA, so proof must be shown by him/her of the requested information or documents falling under this privilege.

1064. As noted in the analysis of Recommendation 3, lawyers, trustees, and auditors are conspicuously exempted from the application of Art. 98a CPC. The judicial authorities do not perceive that as a real problem, as they can still call them as witness under Art. 105 CPC to disclose the necessary information, or directly use the search and seize possibilities of Arts. 92 and 96 CPC, however, assessors retain certain reservations (see analysis of R.3). It has to be noted, however, that the CPC provide for a very broad definition of legal privilege which 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. Art. 108 CPC states that "Defense counsel, attorneys at law, legal agents, auditors, and patent attorneys" are entitled to refuse to give evidence, with regard to what has become known to them in this capacity. This indeed delineates the legal privilege exception to situations where the lawyer has acted in his specific legal counsel capacity. It has to be noted, however, that lawyers may at the same time act as trustee, which opens the possibility of inappropriate use of the legal privilege protection to hamper authorities' powers to identify and trace property that is, or may become subject to, confiscation or is suspected of being proceeds of crime. Furthermore, as already stated in the analysis on R3, the extension of the privilege to auditors is unfounded.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6):

1065. All powers granted to the relevant authorities in domestic cases are available in response to requests for mutual legal assistance. Art. 9, para. 1 of the MLA stipulates that the provisions of the CPC are applicable to mutual legal assistance proceedings unless specified otherwise. For powers of law enforcement authorities concerning the production of documents,

[74] See footnote 19.

search of persons and premises, and seizing and obtaining documents, and the issues with regard to instrumentalities please refer to the analysis under R.3. The issues noted under that section and criterion 36.5 apply accordingly.

Avoiding Conflicts of Jurisdiction (c. 36.7):

1066. Coordination at the domestic level is organised by allocating related legal assistance proceedings and domestic criminal proceedings to the same judge, who is responsible for communicating and coordinating with the foreign requesting jurisdiction(s). Experience has shown that proceedings can be concluded more quickly and expediently if the competence for active and passive mutual legal assistance is also assigned to the competent investigating judge, since this helps prevent problems arising from the involvement of additional persons. This also goes for the Office of the Public Prosecutor, where one and the same prosecutor is responsible for the legal assistance and domestic criminal proceedings.

1067. Transfer of prosecution or of enforcement (meaning seizure and confiscation) to foreign judicial authorities with the purpose of coordinating the proceedings in Liechtenstein and abroad, is a regular practice. Liechtenstein also forwards information on criminal proceeds on the basis of the new Art. 54a MLA (spontaneous transmission of information).[75]

1068. Art. 59 MLA, as amended in 2010, allows foreign judicial and law enforcement authorities to consult the court files and to participate in the execution of the MLA request on Liechtenstein territory, which is a commendable practice, particularly in complicated cases and with MLA requests involving several states.

Additional Element—Availability of Powers of Competent Authorities Required under R.28 (c. 36.8):

1069. The investigative powers at the Liechtenstein authorities' disposal under R.28 are also available when there is a direct request from a foreign judicial or law enforcement authority (Art. 9, para. 1 MLA). Police-to-police requests through the Interpol channel normally only allow for communication of information or intelligence, not for incisive investigation using coercive measures. With the consent of the involved or targeted person, however, some noncoercive investigative acts are not excluded, such as taking a statement.

International Cooperation under SR V (applying c. 36.1–36.6 in R.36, c. V.1):

[75] No precise data. The Public Prosecutor estimates having supplied spontaneous information in some 10 cases since 2010.

1070. All comments and conclusions regarding to the MLA related to the ML offense and instances also apply in the FT context. The specific obligation of Art. 98a CPC for FIs and management entities to supply relevant information and rendering documents for law enforcement purposes explicitly applies to FT-related situations.

Additional Element under SR V (applying c. 36.7 and 36.8 in R.36, c. V.6):

1071. All comments and conclusions regarding to the MLA related to the money laundering offense and instances also apply in the financing of terrorism context.

International Cooperation under SR V (applying c. 37.1–37.2 in R.37, c. V.2):

1072. See analysis under 2007 MER.

International Cooperation under SR V (applying c. 38.1–38.3 in R.38, c. V.3):

1073. See analysis under 2007 MER.

Additional Element under SR V (applying c. 38.4–38.6 in R.38, c V.7):

1074. See analysis under 2007 MER.

Statistics (applying R.32):

1075. Following statistical figures for the past four years were made available by the Liechtenstein authorities:

Statistics Table 6. Number of MLA requests addressed to Liechtenstein

Year	Number of MLA requests addressed to Liechtenstein	Average duration of execution	Refused requests
2009	339	91 days	4 (no factual information given 1, recall 3)
2010	368	93 days	39 (no factual information given 18, request was recalled by requestor 5, fiscal affairs 3, no link to LIE 5, fishing exhibition 1, others 6)
2011	385	69 days	26 (no factual information given 12, military affairs 1, no link to LIE 4, others 4)

2012	333	59 days	23 (no factual information given 14,[76] fiscal affairs 3, no link to LIE 3, lack of dual criminality 2, others 1)

Requests for confiscation included in table above (implemented)

Year	Number	Amount in EUR
2009	2	2,120,000
2010	3	5,068,000
2011	2	2,751,400
2012	3	900,000

Foreign requests for freezing/seizure (implemented)—only available for 2012

2012	18 requests	63.500.000 EUR

Liechtenstein mutual legal assistance requests

2012	347
2011	416
2010	320
2009	328

Mutual legal assistance requests listed by requesting state

	2012	2011	2010	2009

[76] Many of the requests refused for lacking information were later sent again in a complete form and were then executed.

Switzerland	114	104	115	147
Austria	99	157	136	86
Germany	45	51	63	48
Slovenia	11	6	2	1
Spain	7	3	3	4
Czech Republic	7	9	2	4
Hungary	7	2	3	3
France	6	9	2	3
Italy	6	8	10	8
Netherlands	6	5	4	8
UK	2	8	8	6
USA	1	6	4	4
Brazil	2	-	3	1
Poland	2	5	3	6
Finland	4	1	-	6
Latvia	3	1	2	4

Offenses incoming mutual legal assistance requests related to:

	2012	2011	2010	2009
Fraud	124	111	108	95
Money laundering	70	60	70	68
Violation of Road Traffic Act	68	122	100	80
Embezzlement	40	42	43	38
Criminal breach of trust	38	38	62	37
Offense involving documents	38	23	33	36

Theft	21	21	-	25
Various bankruptcy offenses	16	18	17	21
Bribery	15	19	26	32
Criminal group/organisation	10	-	-	-
Violation of the Narcotics Act	-	16	19	21

Effective Implementation

1076. As the tables show, the MLA traffic is quite intense in both directions. The figures indicate a generally responsive approach by Liechtenstein. The number of incoming ML-related requests that meet with a positive response is to be noted. The statistics in the area of seizure and confiscation are encouraging. The number of refusals or nonexecutions is not disproportionate, and the reasons appear founded. In many cases the request could not be complied with in the absence of any element being present in Liechtenstein. Refusals on the fiscal exception ground were said to be justified by the exclusive fiscal character of the request. Other refusals related to requests for administrative assistance or emanating from nonjudicial authorities.

1077. All in all, the MLA system has improved its effectiveness range. The Liechtenstein authorities have first of all taken important steps in speeding up the process by reducing the possibility of delaying procedural tactics. Previously, when any appeal against a conservatory measure would simply have suspended the MLA procedure, this obstacle has been removed, as a rule, by bringing all procedural incidents together with the final ruling on implementation of the MLA request. Also the possibility to appeal to the Supreme Court as an intermediary step delaying the procedure is no longer open to the defendant. This has resulted in a significant shortening of the average implementation duration from 91 to 59 days.

1078. Furthermore, the third round recommendation to exclude serious and organised fiscal fraud from the fiscal exemption list has been implemented insofar it relates to serious VAT fraud affecting the budget of the European Union by the introduction of a specific provision in the MLA (Art. 51.1a) and as a result of the Schengen Agreement. Mutual legal assistance is also allowed for violation of Customs prohibitions. While this and the agreements signed by Liechtenstein to enhance cooperation with regard to tax matters are an important step in strengthening the MLA regime, there is still an impediment to the effective provision of MLA when the offense has a fiscal character. This issue will have to be addressed by an extension to all serious tax crimes with the transposition of to the new FATF standards in this area.

1079. A vulnerability remains, also in the mutual legal assistance context, in the restriction of Art. 98a CPC in the sense that it does not cover information gathering with some relevant categories, such as payment system providers, e-money institutions, insurance mediators, and DNFBPs. The possibility of seizing documents according Art. 96 CPC does not cover that lacuna. Particularly in the case of lawyers (acting as financial intermediaries or in other nonlitigation or

legal advices circumstances), of auditors and trustees substantial information may not be captured in seizable documents. Also, it is not clear how an abuse of the legal privilege can be countered. The approach of assuming that lawyers with a dual capacity act as trustees in case of doubt are practical, but not beyond legal challenge.

1080. Finally, from feedback received, it appears that, particularly with regard to obtaining bank record, the effectiveness of the legal procedures could be challenging in the presence of dilatory tactics, and in the light of the information given to the affected person(s), which is perceived at hampering the ongoing investigations in the requesting country. On this point, authorities explained that necessary conservatory actions are taken first to avoid evidence being destroyed or assets dissipated.

7.3.2. Recommendations and Comments

1081. The margin for effectiveness of the MLA, although improved in terms of expeditiousness, should be further improved by the following:

- The incomplete coverage of Art. 98a CPC needs to be addressed to include all persons and entities subject to the DDA, more in particular lawyers, auditors, and trustees;

- The authorities should consider criminalising serious tax offenses, include them as predicate offense to ML and extend the MLA to all these serious tax crimes by transposing the present relevant international standards shortly; and

- The authorities should consider measures to mitigate the risk of hampering ongoing investigations in requesting countries that might stem by informing the parties affected by requests of MLA

7.3.3. Compliance with Recommendations 36 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**LC**[77]	• Not all DDA subjects are under the obligation to supply relevant information as provided by Art. 98a CPC; **<u>Effectiveness</u>** • Issues of legal privilege and confidentiality in dual capacity situations; • Particularly with regard to obtaining bank record, the effectiveness of the

[77] 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 3rd round report on Recommendation 28.

		legal procedures could be challenging in the presence of dilatory tactics.
SR.V	**LC**[78]	• Not all DDA subjects are under the obligation to supply relevant information as provided by Art. 98a CPC; **Effectiveness** • Issues of legal privilege and confidentiality in dual capacity situations; • Particularly with regard to obtaining bank record, the effectiveness of the legal procedures could be challenging in the presence of dilatory tactics.

7.4. Extradition (R.37, 39, SR. V Rated PC in the Third Round MER)

7.4.1. Description and Analysis

Summary of the 2007 MER factors underlying the ratings and recommendation and progress achieved since the last MER

1082. The third MER assessors advised the Liechtenstein legislator to endeavor to find a solution for possible excessive delays caused by delaying tactics before the Constitutional Court, also that serious and organised fiscal fraud should no longer be excluded as ground for extradition. Finally, as for MLA, the deficiencies in the ML and FT offenses needed addressing so as not to pose a potential obstacle for extradition in the light of the dual criminality principle.

1083. Recent figures show that the average duration of an extradition procedure is not excessive. Serious VAT fraud can be a basis for extradition under the Schengen regime. Deficiencies in the ML and TF criminalisation have been addressed and meet the dual criminality test.

Legal Framework:

- Mutual Legal Assistance Act of September 15, 2000 (MLA), as amended;
- Schengen Implementation Agreement (SIA) December 19, 2011;
- European Convention on Extradition (ECE).

[78] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition, it has also taken into account the findings from the 3rd round report on Recommendations 37 and 38.

Money Laundering, terrorist acts and terrorism financing as Extraditable Offense (c. 39.1; SR. V.4):

1084. The general extradition rules are laid down in Chapter II of the MLA insofar international conventions do not stipulate otherwise (Art. 1 MLA). All rules apply equally to cases involving ML or FT. Art. 11 of the MLA sets out the general rule for the provision of extradition which applies to all types of criminal proceedings, including those relating to ML or FT.

1085. Extradition can be granted for the prosecution of willfully committed acts that are punishable under the law of the requesting state by a deprivation of liberty of more than one year or by a preventive measure of the same duration, and that are subject to a deprivation of liberty of more than one year under Liechtenstein law. Extradition is also allowed in cases where the deprivation of liberty or the preventive measure has been imposed for one or more offenses as qualified above, when a remaining period of at least four months still needs to be executed. Consequently, ML (Art. 165 PC), participation in or support of a terrorist group (Art. 278b PC), terrorist activities (Art. 278c PC), and FT (Art. 278d) are extraditable offenses.

1086. Exceptions to the general rule are provided for:

- the person whose extradition is sought is an Liechtenstein national (Art. 12, para. 1 MLA);
- political offenses (Art. 14, para. 1) and offenses of an exclusive military and fiscal nature (Art. 15);
- other punishable acts that are based on political motives or aims, unless the criminal nature of the act outweighs its political nature (Art. 14, para. 2);
- with some exceptions, punishable acts that are subject to Liechtenstein jurisdiction (Art. 16 MLA);
- the person who has been acquitted by a court of the state in which the offense was committed or has otherwise been exempted from prosecution (Art. 17, no. 1 MLA);
- the person who has been convicted by a court in a third country, and the punishment has been fully served or waived in whole or in part for the portion of the sentence remaining to be enforced, or if the enforceability of the punishment comes under the statute of limitation pursuant to the law of this third country (Art. 17, no. 2 MLA);
- prosecution or execution that come under the Liechtenstein statute of limitation (Art. 18 MLA);
- criminal proceedings in the requesting state that do not or did not comply with the principles of Art. 6 (right to a fair trial) of the Human Rights Convention (Art. 19, para. 1 MLA);

- punishment or preventive measure imposed by or to be expected in the requesting state that would be enforced in a manner that is not consistent with the requirements of Art. 3 (prohibition of torture, inhuman or degrading treatment or punishment) of the Human Rights Convention (Art. 19, para. 2 MLA);

- the extraditable person who would be subject to persecution in the requesting state because of his/her origin, race, religion, affiliation to a specific ethnic or social group, nationality, or political opinions, or would have to expect other serious prejudices for any of these reasons (Art. 19, para. 3 MLA);

- execution of the death penalty or other punishments or preventive measures that do not comply with the requirements of Art. 3 of the Human Rights Convention mentioned above (Art. 20 MLA);

- the extraditable person who was without criminal responsibility at the time of the punishable act (Art. 21 MLA); and

- the extraditable person who would be exposed to hardship, i.e. to obvious disproportionately severe conditions when considering the severity of the punishable act with which he or she is charged, his or her young age, the long period of his or her residence in Liechtenstein, or other serious reasons based on his or her personal circumstances (Art. 22 MLA).

1087. A further limitation to extradition is laid down in Art. 15, no. 2 of the MLA, providing that a request for extradition is inadmissible for acts that constitute a violation of stipulations relating to taxes, monopolies or customs duties, or foreign exchange regulations, or of stipulations relating to the control of or foreign trade in goods. Consequently, as a rule, extradition still cannot be granted when the underlying offense is a violation of customs duties or serious or organised fiscal fraud (except in SIA circumstances; see below). There are no instances known where extradition was refused as a result of an overly broad interpretation of the concept of fiscal offense.[79]

1088. Due to Liechtenstein's accession to Schengen, Art. 63 of the Convention implementing the Schengen Agreement requires, with reference to the conventions referred to in Art. 59, the extradition of persons prosecuted by the justice authorities of the requesting state party in connection with a punishable act referred to in Art. 50, para. 1, or sought for the purpose of executing a sentence or measure imposed because of such an act. Art. 59 SIA refers to Art. 2 of the European Convention on Extradition, requiring extradition in respect of offenses punishable under the laws of the requesting state and of the requested state by deprivation of liberty or under a

[79] Feedback referred to a contested extradition request related to two fiscal and four counts of nonfiscal offenses, where extradition was granted for only one count. The three remaining nonfiscal counts were rejected by the court, however not on the basis of fiscal considerations but on self-laundering exception grounds.

detention order for a maximum period of at least one year or by a more severe penalty. Since Liechtenstein's accession to Schengen, a punishable act qualified as tax fraud under Liechtenstein law in accordance with Art. 88 of VAT Act—with a penalty of imprisonment of up to one year—is extraditable under the European Convention on Extradition.

Extradition of Nationals (c. 39.2, SR.V.4):

1089. In line with the civil law tradition extradition of Liechtenstein nationals is not admissible pursuant to Art. 12, para. 1 of the MLA, except if the person has given his/her express consent after being informed of the consequences of his decision. The European Arrest Warrant regime does not apply to Liechtenstein.

1090. If extradition for ML is denied on the sole ground of nationality, Liechtenstein can take jurisdiction pursuant to Art. 65, para. 1, no. 1 PC (direct jurisdiction over acts committed by Liechtenstein nationals abroad) on condition of double criminality (*aut dedere, aut judicare*). Liechtenstein courts also have explicit jurisdiction over terrorist acts and terrorist financing, wherever committed, when the perpetrator is a Liechtenstein citizen (Art. 64, para. ,1 nos. 10 and 11 PC).

Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):

1091. Art. 60 MLA gives the Ministry of Justice the key role of liaising with the foreign authorities to collate all the relevant facts and figures, including requesting additional information or documents, in order to ensure that the case can be effectively pursued in Liechtenstein. The Office of the Public Prosecutor uses its own channels of communication with its foreign counterparts for that purpose. The possibility of waiving jurisdiction and taking over prosecutions is frequently used in Liechtenstein.

Efficiency of Extradition Process (c. 39.4):

1092. In practice, almost all requests for extradition are transmitted between the Ministry of Justice, not through the more laborious and time-consuming diplomatic channel. Simplified extradition procedures according to Art. 32 MLA, based on the consent of the extraditable person, take just a matter of days. The ordinary extradition procedures obviously take more time. The use of the full arsenal of appeal possibilities is not uncommon in the different stages of the extradition procedure, starting with the provisional arrest of the person to be extradited, to the Constitutional Court ruling. Appeal with the Supreme Court is open against the recommendation of the Court of Appeal (licet or nonlicet). The Supreme Court ruling can be challenged with the Constitutional Court on fundamental right grounds. On the other hand, appeals against the provisional arrest do not suspend or delay the extradition proceedings as such. On average the subsequent steps may take about four to six months, although the latest statistics show a shorter duration of approximately three months. The final decision of the government (i.e., the Minister of Justice), however, is not open to legal challenge (Art. 77, para 1 MLA).

Additional Element (R.39 and SR.V)—Existence of Simplified Procedures relating to Extradition (c. 39.5):

1093. Simplified procedures are possible under Art. 32 of the MLA when a person consents to the extradition and to being transferred without the need for the requesting state to conduct a formal extradition proceeding. In the absence of any contradictory provisions, the simplified procedure may also apply when the crime for which a person is being extradited is ML or FT.

Statistics (R.32)

1094. Following statistical figures were submitted by the authorities:

Statistics Table 7. Extradition requests and duration of execution.

Year	**Number of extradition requests addressed to Liechtenstien**	**Average duration of execution**
2009	6 (2 recalled)	19.5 days
2010	1 (pending[80])	-
2011	2	92 days
2012	4 (1 recalled, 1 refused due to lack of reason for request)	92 days

Year	Prosecutions transferred to a foreign jurisdiction
2009	18
2010	22
2011	31
2012	14

Year	Requests to Liechtenstein of foreign jurisdictions[81]	Number of criminal proceedings taken

[80] Because of procedural complications. Relates to a case where the defendant was extradited from Monaco and was convicted to nine years imprisonment in Liechtenstein. In the meantime, the UAE asked Liechtenstein for the extradition of the same individual without involving Monaco in the request. Extradition is only possible if Monaco consents.

	to take over criminal proceedings	over from foreign jurisdictions
2009	20	17
2010	18	13
2011	13	12
2012	13	12

1095. According to the authorities, grounds for refusal for taking over foreign proceedings were statute of limitation, unknown perpetrators, no residence of the perpetrators, and violation of public order.

Effective implementation

1096. Compared with the third round findings, the duration of the extradition proceedings have in practice been substantially reduced to a maximum average of around three months, which in extradition proceedings is quite reasonable. Apparently, the dilatory procedural tactics before the Constitutional Court have been met by an adequate response by the court of giving priority to extradition matters. Effectiveness will be enhanced if the courts maintain this approach.

1097. The third round criticism on the exclusion of extradition for serious and organised fiscal offenses has not received a satisfactory response. It is still a general ground for refusal and is only legally permissible for serious VAT fraud with Schengen countries since the SIA recently came in force on December 19, 2011. Although not a formal requirement as yet, it is not unnecessary to remind that the recent revision of the FATF standards now gives specific emphasis to the countering of serious tax crimes. Also, there are still deficiencies in the criminalisation of ML and FT that can create obstacles as a result of the dual criminality rule.

1098. As the statistics show, Liechtenstein continues the practice, already highlighted in the previous assessment, of frequently assuming jurisdiction at the request of foreign jurisdictions. Between 2009 and 2012, Liechtenstein received 64 such requests, 54 of which have been accepted. Conversely, between 2009 and 2012, Liechtenstein waived jurisdiction and transferred the prosecution to foreign judicial authorities in 85 cases. These figures reflect a clear cooperative willingness of the Liechtenstein judiciary to assist in an effective administration of justice on the one hand, while on the other hand the number of cases where Liechtenstein relies on other

[81] Germany, Austria, Switzerland.

jurisdictions to initiate or continue criminal proceedings and prosecutions may raise questions in respect of the autonomy of the ML offense, as commented under R.1.

7.4.2. Recommendations and Comments

1099. It is recommended that the authorities:

- Adopt legislation introducing serious tax crimes as extradition ground;
- At a minimum expand the possibility to extradite for serious VAT fraud beyond the Schengen jurisdictions.

7.4.3. Compliance with Recommendations 39 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**C**	
SR.V	**C**	

8. OTHER FORMS OF INTERNATIONAL COOPERATION (R.40 AND SR.V)

8.1. National and International Cooperation

Summary of 2007 MER factors underlying ratings and recommendations

1100. The MER rating for Recommendation 40 was PC. The MER noted that the ability to exchange information relied on case law to override legislation that includes explicit secrecy provisions restricting information exchange. The appeals procedure had the potential to undermine the effectiveness of information exchange. The 2008 MER further noted that the law does not expressly provide for the FIU to have direct or indirect access to all relevant information held by all entities subject to the DDA. This shortcoming has not yet been addressed by the authorities.

Legal Framework:

- Financial Market Authority Act 2004 (FMAA);
- Due Diligence Act 2008 (DDA) Art. 37;
- Banking Act 1992 (BA), Art. 30f et seq;
- Insurance Supervision Act 1995 (ISA), Art. 61et seq;
- Investment Undertakings Act 2005 (IUA) Art. 102 et seq;
- Asset Management Act 2005 (AM) Art. 53 et seq;

- Public Enterprise Act, Arts. 3 and 23;
- Data Protection Act;
- Arts. 35, 35a, and 35b National Police Act (NPA);
- FIU Act.

FMA

1101. Cooperation between supervisors that requires exchange of confidential data normally concerns such matters as the stability of regulated institutions and their compliance with regulatory provisions. While supervisors must have access to confidential data about customers, that access is normally granted for the purpose of checking that the regulated person is collecting and recording information about a customer in a manner designed to meet its obligations as a regulated institution. The powers to examine such confidential customer information are not normally given to facilitate investigations into the affairs of the customer per se. The exception to this relates to market abuse provisions in the securities context, where many countries give supervisors the responsibility to investigate market abuse which is an offense that can involve customers of institutions rather than (or as well as) regulated institutions.

1102. In the context of AML/CFT measures, the powers of cooperation and information exchange must be sufficient to enable the FMA to assist foreign supervisors with respect to compliance with AML/CFT obligations. This might include ensuring that their FIs are applying AML/CFT measures globally. It should also be possible to exchange information to assist foreign supervisors in assessing the fitness and properness of a person who is seeking a license or a position as an owner or director of an FI that is going to be subject to AML/CFT obligations. In the latter case, the foreign supervisor is likely to be interested in an institution or individual from the perspective of their suitability with respect to all aspects of the business of the relevant institution and not just its AML/CFT obligations.

1103. It is likely, therefore, that the demand for information exchange between supervisors that is purely related to AML/CFT matters is likely to be fairly modest. This is the case in Liechtenstein, where although there is experience of information exchange concerning customers, it is almost entirely in the context of securities markets. There is experience of exchanging information about banks to assist in prudential supervision. There is virtually no experience in exchanging information on AML/CFT matters. This is not unusual.

1104. Nevertheless, In order to be able to cooperate with foreign supervisors, the FMA needs to have:

- The ability to share, with foreign authorities, confidential information that the authority holds on request and spontaneously (R.40.1–40.3);

- A power to collect information from regulated institutions on behalf of other authorities, without having to rely on there being a domestic reason for collecting the information in addition to the request from a foreign supervisor (R.40.4);

- No obligation to impose unreasonable conditions on the exchange of information or constraint on information exchange by domestic secrecy provisions (R.40.6, 40.7, and 40.8).

- The ability to protect information received from a foreign supervisor (R.40.9).[82]

Widest Range of International Cooperation (c. 40.1)

FMA

1105. The FMA is obliged under the DDA Art. 37, to provide information to a foreign financial market supervisory authority, where that authority requires the information to fulfill its responsibilities and subject to certain conditions. These conditions are discussed in the context of R.40.6–R.40.8 below. However, it is important to note that the FMA is not simply given discretion to cooperate on AML/CFT matters but is under an obligation to do so.

1106. The information exchange provisions in the DDA state that they apply only to the extent that cooperation with foreign authorities are not regulated by special legislation. In addition, the FMA has powers to cooperate under Art. 30h of the Banking Act, and Arti. 61b et seq of the Insurance Undertakings Act. There are further powers in the AMA and UCITSA, but Art. 27a et seq of the FMAA, which also provides for information exchange, states that it takes precedence over other legal requirements concerning administrative assistance with foreign authorities in the field of securities supervision.

1107. As noted, a number of these provisions state explicitly that they either override or are overridden by other provisions, but in no case does the legislation state exactly what legislation is overridden by what. There is no definition of what "special legislation" overrides the provisions in Art. 37 of the DDA and there is no definition of what is meant by legislation on securities supervision in the FMAA. This leads to uncertainty as to which provision applies in what circumstances.

1108. In the case of banks, insurance, and securities businesses, the DDA itself and the legislation on banking, insurance, and securities (the latter in the FMA Act) explicitly gives the FMA the power to pass confidential information to foreign regulatory authorities. In the case of the DDA, exchange of confidential information is possible where the foreign supervisory authority needs the requested information to fulfill its supervisory responsibilities. Similarly, the Banking Act, the Insurance Act, and the FMAA (for securities) permit the FMA to exchange information where this is necessary for the purpose of enabling the foreign supervisor to fulfill its supervisory

[82] R40.5 is solely for law enforcement.

responsibilities. (although in the case of the FMAA, there is, in principle, a requirement for the approval of the administrative court —which the FMA have confirmed has not proved to be a barrier in practice and which is discussed below in the context of 40.6)

1109. In the case of these three sectors, therefore, either the DDA applies or, if it is overridden by the banking, insurance, or FMA Acts, the relevant provisions also provide for information exchange to foreign supervisors for the purpose of that supervisor's responsibilities. The FMA is not constrained in exchanging information by its own confidentiality obligation (Art. 23 of the Public Enterprise Act COPA) because Art. 3 of that Act states that it only applies insofar as there is no other relevant provision in other legislation. The FMA has successfully exchanged information with foreign supervisors in these sectors without challenge, although not for AML/CFT purposes.

1110. For trust and company service providers and attorneys, the legal provisions on this point are not entirely clear. Both the Professional Trustees Act and the Lawyers Act have very strict confidentiality provisions regarding information held on customers. The FMA stated that the powers in the DDA override this constraint and that it has in the past successfully gained access to such information for its own purposes. The FMA's view was confirmed by the Supreme Administrative Court in 1999 and was never challenged ever after by any DNFBP. Once the FMA gained access to confidential information pursuant to Art. 28 of the DDA, it may also share such information with foreign supervisors based on Art. 37 of the DDA. Art. 37 of the DDA applies "to the extent that cooperation with foreign authorities is not regulated in special legislation." As neither the Professional Trustees Act nor the Lawyers Act contain any provisions dealing with the exchange of customer information to a foreign authority, it is reasonable to make the assumption that the DDA powers would apply for DNFBPs as well.

1111. However, although the assessors accept that the statutes give the FMA the power to pass confidential information to foreign supervisors, the conditions included in the different statutes relating to the protection of information by the recipient authority that must be satisfied before confidential information can be passed to a foreign authority are different and the DDA provisions are more restrictive than those in the Banking, Insurance, and FMA Acts (for securities)—with the latter also having the additional condition, in principle, of the need for the approval of the Administrative Court. This is discussed below in the context of R40.6–40.8. In summary, the FMA has wide powers to exchange information, including customer confidential information in respect of banks, insurance, and securities business, regardless of whether the governing law is the DDA or the FMAA, Banking Act, or Insurance Act. With respect to DNFBPs, the Supreme Administrative Court confirmed that, under the DDA, the FMA has the power to access information otherwise covered by professional secrecy from lawyers and trustees and the assessors accept that this ruling in combination with the DDA provisions give the FMA the power to access confidential information for the purpose of passing it to foreign authorities

FIU

1112. The FIU may request information from foreign FIUs where this is required for any purpose referred to under the FIU Act. The FIU may also, on a reciprocal basis, provide official,

nonpublicly available information to foreign counterparts, provided that a number of conditions set out under the FIU Law are met. The conditions are discussed under the applicable criteria below.

Police

1113. The National Police Act gives the police broad capacity to cooperate with their foreign counterparts. Basically, on condition of reciprocity, a broad range of (administrative) assistance and information exchange is allowed that do not require a court order or application of the MLA, such as sharing of personal data, covert investigations or observations in criminal proceedings, and interviews in the presence of foreign officers. Most of the administrative assistance relates to:

- Data contained in the police database (including criminal records;
- Commercial register data;
- Vehicles owners data;
- Hotel registration data;
- Telephone number data;
- Traffic data;
- IP addresses data;
- Individual citizens register (ZPR) data;
- Interviewing individuals.

Provision of Assistance in Timely, Constructive and Effective Manner (c. 40.1.1):

FIU

1114. Generally, the FIU exchanges available information with its foreign counterparts in a timely, constructive and effective manner. The FIU provided the evaluators with statistics that showed that the information as provided within a few days only. The circumstance that (i) the FIU can obtain information from a reporting entity only if a SAR has been submitted; and (ii) that the power to obtain information is subject to secrecy provisions and that the power to obtain information indirectly through the FMA is affected by the limitations that the FMA has to share confidential information may have an impact on the constructive and effective nature of information exchanged with foreign FIUs.

Police

1115. Police-to-police cooperation is usually characterised by its informal and flexible nature. No incidents obstructing an adequate and timely response to counterpart requests have

been reported. Please refer to the issue of the broad nature of the legal privilege discussed elsewhere in this report.

Clear and Effective Gateways and Channels (c. 40.2)

FMA

1116. There is no constraint on the FMA's ability to reach agreements on information exchange, and it has done so, although not in the context of AML/CFT.

1117. There is no requirement in the Banking Act, the Insurance Act, or the FMAA with respect to securities supervision that MoUs should be in place prior to information being exchanges, although such MoUs have been signed with some authorities. The Lichtenstein authorities have annual meetings with German, Austrian, and Swiss counterparts at which constructive exchanges of information can take place.

1118. As an EEA member, Liechtenstein attends all meetings of the European Supervisory Authorities, such as the European Banking Authority, including the ESA's AML subcommittees. The FMA also participates in the work of the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) (formerly Committee on the Prevention of Money Laundering and Terrorist Financing).

FIU

1119. In order to facilitate the exchange of information the Director of the FIU may, after consultation with the Minister of Finance, conclude a memorandum of understanding with other FIUs, subject to the approval of the government. The existence of an MoU is not, however, a prerequisite for the exchange of information with other FIUs. The FIU has so far signed an MoU with Belgium and Monaco (both in 2002); Slovakia, Croatia, and Lithuania (in 2003); Poland and San Marino (in 2004); Georgia (in 2004); Switzerland and Russia (in 2005); Romania and Chile (in 2006); France (in 2007); Ukraine and Canada (in 2008); and South Africa and Japan (in 2013). The FIU is currently negotiating MoUs with Australia, Serbia, Singapore, and the Republic of Moldova, as well as Bosnia and Herzegovina. The FIU is not subject to any compliance procedure in Egmont and has the full capacity to share financial and other kind of information in its possession with other Egmont FIUs. As an EEA member, Liechtenstein FIU attends all meetings at European-level authorities such as the FIU Platform meeting.

1120. Information is exchanged by the FIU through the Egmont Secure Web (ESW). The ESW is checked twice a day for incoming requests. All incoming requests are immediately assigned to an analyst, and the same procedure that applies to domestic SARs is applied to requests for foreign FIUs. The average response time for incoming requests of the top five countries (in terms of quantity of incoming requests) is as follows:

- FIU of country A: 1.8 days;
- FIU of country B: 1.0 days;

- FIU of country C: 7.0 days;
- FIU of country D: 7.3 days; and
- FIU of country E: 8.6 days.

Police

1121. Interpol is the classical appropriate communication channel for speedy and multilateral exchange of information directly between police authorities. The accession of Liechtenstein to the Schengen system also has an important impact on the efficiency and speed of the cooperation with the Schengen countries' police agencies, particularly through SIRENE and the Schengen Information System. Furthermore the use of liaison officer networks is a common and effective practice enhancing information exchange and operational cooperation of information between police authorities.

Spontaneous Exchange of Information/ Information in relation to money laundering and the predicate offense (c. 40.3)

FMA

1122. The DDA, the FMAA, and the Banking Act (but not the Insurance Act) all refer to exchange of information with a "requesting" authority. The FMAA is explicit that information should only be exchanged in response to a request. The implication of this is that information cannot be exchanged spontaneously. The FMA have stated that information has been exchanged spontaneously in practice (for example, at international meetings). However, their ability to do so has not been tested in the context of AML/CFT. The assessors would accept that, in practice, even with these provisions, it would always be possible for the FMA to alert a foreign authority to the fact that they had information of interest to that foreign authority and could pass it if they received a request. The absence of an explicit provision relating to spontaneous information exchange would not, in practice, be an insuperable barrier.

1123. The FMA is able to exchange information on market abuse as a predicate offense, because it is a securities supervisor and has responsibility for investigating such offenses. However, it would not be appropriate for a supervisor to exchange information on underlying offenses beyond those within its direct responsibility.

FIU

1124. Exchange of information is possible both spontaneously and upon request. The FIU noted that it has exchanged information with foreign FIUs spontaneously on many occasions. Although no statistics are maintained, the assessors have no reason to believe otherwise.

1125. The FIU is empowered to exchange information in relation to ML, FT, and predicate offenses.

Police

1126. The police have the ability to spontaneously provide information to their counterparts on all offenses and related issues, including ML and FT (Art. 35.2.b NPA).

Making Inquiries on Behalf of Foreign Counterparts (c. 40.4):

FMA

1127. Art. 28(4) of the DDA provides that the FMA may demand from any person subject to the Act all information and records it requires to fulfill its supervisory activities for purposes of the DDA, which as indicated above include cooperation with foreign authorities pursuant to Art. 37 of the DDA. In addition, Art. 28, para. 1, lett. c of the DDA states that an extraordinary inspection may be undertaken if circumstances exist that appear to endanger the reputation of the financial center or if the request indicated that a financial institution had failed to conduct its due diligence properly. Art. 37 would allow the DDA to pass this information to a foreign supervisor.

1128. Art. 26, para. 1 of the FMAA allows the FMA to invoke a fact finding procedure if there are circumstances that may put the reputation of the finance sector at risk. This procedure allows the FMA to demand information from licensed persons and, unlicensed persons if they are carrying out licensable activity without a license (Art. 2,6 para. 2). Art. 27 et seq of the FMAA would allow this information to be passed to foreign securities supervisors (but not other supervisors), subject, in principle, according to the FMAA, to the approval of the administrative court.

1129. Art. 30i of the Banking Act permits the FMA to respond to a request from a foreign authority to cooperate in monitoring, in onsite inspections, or in investigations. It can do so by carrying out the work itself, permitting the foreign supervisor to do it, or allowing an independent auditor or expert to do so. These powers can only be used for "matters concerning the law of supervision."

1130. Similarly, Art. 27 of the EIA, Art. 28 of the PSA, Art. 27h of the FMAA, and Arts. 133 and 136 of the UCITSG contain similar provisions as those set out in Art. 30i of the Banking Act and provides the FMA with the power to obtain information from regulated entities for purposes of sharing this information with foreign supervisors within the framework of supervision. For insurance businesses, the IUA contains similar powers by the FMAA with respect to reinsurance businesses only. It is not explicit that this would be regarded as covering compliance with DDA requirements, but it would appear probable that it would and the assessors accept that this is a reasonable assumption to make.

1131. As noted above, the assessors accept that, under the sector specific Acts: Banking and FMA Acts (the latter for securities), and the DDA, there are powers by the FMA to make enquiries to obtain information for the purpose of passing it to foreign supervisory authorities. For the purpose of obtaining the information, it makes little difference whether the Banking, Insurance, or DDA laws apply. Strictly speaking the provisions of Art. 27h in the FMAA would appear to make it more restrictive, although the FMAA have stated that this has not proved to be a barrier in

practice. For insurance businesses other than reinsurances companies, Art. 28(4) of the DDA would still applicable despite the absence of provisions in sector-specific laws.

1132. As already noted, with respect to professional trustees and lawyers, the relevant laws do not themselves envisage any exceptions to the strict confidentiality provisions. In this case, the FMA may rely on the powers in the DDA to obtain information. As noted above, the Supreme Administrative Court confirmed that under the DDA, the FMA has the power to access information otherwise covered by professional secrecy from lawyers and trustees and although this has not been tested where the information is obtained for the purpose of passing it to a foreign authority, the assessors accept that it is reasonable to assume that the powers can be used for this purpose.

Police

1133. The police can render assistance in the form of inquiries on behalf of foreign law enforcement authorities, as described in 40.1 and 40.5.

FIU Authorised to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):

1134. Following a request for information, in line with criterion 40.4.1, the FIU may search its own databases, including information related to SARs and search or make requests for information in other (government and commercial) databases to which it has direct and indirect access. Concerning indirect access to information held by other public authorities, while the FIU Act sets a general competence to "obtain information necessary to detect ML, predicate offense to ML, organised crime, and terrorist financing" this power is subject to legal provisions relating to the protection of secrecy. Also, with regard to information that need to be requested to the FMA, this authority would not be in the position of sharing it with (or obtaining it for) the FIU, due to the issues noted under Recommendations 4 and 26.

1135. The FIU informed the evaluators that in certain cases, when a request for information requires the gathering of information subject to secrecy from a reporting entity, a meeting is held with the reporting entity from which information is required, to bring to its attention the potential suspicious activity linked to one of its customers. This would trigger the submission of a SAR by the reporting entity, which would thus provide all the required additional information to the FIU. The FIU would then forward the information to the foreign FIU. This has been tested, and the evaluators have been shown cases where this indirect method worked in practice. This procedure would only be followed where the foreign FIU provides sufficient information indicating the existence of a suspicion of ML/FT and a link to the activity or assets in Liechtenstein. The assessors retain reservations about this procedure: information from the requesting foreign FIU should be substantiated enough as to trigger a SAR by the relevant reporting entity in Liechtenstein.

1136. Given the specificity of Liechtenstein and the importance of international cooperation, this framework does not allow for "the widest range of international cooperation" with foreign FIUs, as required by Recommendation 40.

1137. This is also confirmed, in part, by the feedback received on the FIU's practices on the exchange of information. Of the eighteen countries which provided feedback, thirteen noted that the exchange of information is very good, good, standard, or not presenting particular problems (with one country specifically saying that when information about beneficial owners or activities of companies was requested, a response was received, and another, with regard to the one case where information was exchanged, saying that the quality of it was very high). However, the feedback received from four countries was critical of the quality of information exchanged by the FIU. One country indicated that "up to mid-2012, Liechtenstein only [provided] information on criminal records, bank accounts and financial transactions through letters rogatory, in the framework of Mutual Legal Assistance. Nowadays, the FIU just shares banking information if it is available in its database." Another country noted that in the period under review financial information was not provided while another pointed to a couple of instances where it was not possible to obtain identity information or information on beneficial owner. Another country specifically indicated that the main issue with Liechtenstein's exchange of information is the "limited access of the FIU to financial data." Finally, a country indicated that the number and the content of the requests made by the FIU does not reflect the extent of the ML cases expected between the two countries.

1138. Although, the FIU emphasised that it has never refused to provide information, the assessors retain certain reservations on this matter.

Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5):

1139. Police-to-police requests through the Interpol channel normally only allow for communication of information or intelligence, not for incisive investigation. With the consent of the involved or targeted person however some noncoercive investigative acts are not excluded, such as taking a statement. Otherwise the MLA procedure applies.

1140. The treaty between Liechtenstein, Switzerland, and Austria provides for an even broader range of cooperative measures between the law enforcement of the three countries. Procedures are simplified and at the request of the relevant authorities the national police can:

- determine the domicile or sojourn of a person during a certain time;
- determine the holder of telephone numbers;
- establish the identity of a person;
- establish the information concerning the origin of things (history of property in goods like cars, weapons etc.);
- coordinate and initiate of search measures;
- conduct and take over cross-border observations and deliveries;
- establish the willingness of persons to stand as a witness;

- conduct police interrogations;

- clarify traces for evidence.

1141. The cooperation capacities of the Swiss customs, whose radius of action includes Liechtenstein, are also available insofar as Liechtenstein is concerned.

No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (R.40.6):

FMA

1142. It is noted above that there is uncertainty about whether the DDA or the sector-specific laws apply in the case of information exchange involving information collected from banks, securities, and insurance businesses. The significance of this uncertainty is that these laws apply different conditions to the transmission of information particularly with respect to the nature of the confidentiality provision in the requesting state and the restrictions on the use of the information.

1143. The DDA, Art. 37, para. 2 stipulates the conditions that should be met to allow confidential information to be exchanged:

- Sovereignty, security, public order, or other essential interests of the state are not violated;

- The recipient and the persons mandated by the competent authority are subject to a confidentiality requirement equivalent to Art. 23 of the Public Enterprise Act;

- It is guaranteed that the transmitted information is used to verify compliance with due diligence requirements as referred to in the DDA;

- Where the requested information had been received from a foreign authority, the express permission of the transmitting authority must be given and information must only be used for the purpose for which those authorities have consented.

1144. The condition at (b) above refers to Art. 23 of the Public Enterprise Act which states:

"*Organs and employees of public companies shall observe secrecy with respect to information they gain knowledge of whilst carrying out their activity in the public company and where it is in the interest of the public company or the state or it is predominantly in the private interest for this information to be withheld. This shall continue to apply after the end of the organ function or after termination of the employment relationship."*

1145. This provision amounts to a "triple lock" in that it requires information to be held secret if obtained by the FMA and its staff in the course of business and if it is in the interests of any one of the three parties described (the state, the FMA, or the predominant private interest). There is no provision to override private interest in secrecy if the state or FMA wish to disclose. Disclosure is therefore only possible if it is in the interests of all three parties specified. Art. 23

provides for no exceptions. Although Art. 3 of the Act allows these provisions to be overridden by other legislation, the requirement for confidentiality equivalence in Art. 37 of the DDA refers only to Art. 23 and not Art. 3 of the Public Enterprise Act. If interpreted strictly, this could result in severe restrictions, since Art. 23 is an unusual provision with its "triple lock" provision and it is highly unlikely that any foreign authority would have such a restriction.

1146. The information exchange articles in the Banking and Insurance Acts require confidentiality provisions equivalent to those in those acts, and these provisions are less restrictive. Such equivalence provisions would not amount to an undue constraint.

1147. The FMAA has no "equivalence" provision as such, but stipulates that information should not be disclosed by the requesting authority except with the prior written consent of the FMA. The DDA insists on a guarantee that the information should only be used for verifying compliance with due diligence obligations. The Banking and Insurance Acts require that the information should be used only for supervisory purposes.

1148. These conditions in the FMAA are understandable, and broadly equivalent provisions are not unusual internationally. However, they could put a recipient authority in difficulty if the information transmitted included evidence of ML, FT, or other malpractice that should be passed to other authorities within the requesting state. Some authorities may consider that such conditions blocked information exchange as they could not accept information with such restrictions. It is important to note that the DDA gives the FMA the authority to pass information received from foreign authorities to other domestic authorities (Art. 37, para. 4). The Liechtenstein legislation thus regards it as essential that information received from foreign authorities should be capable of being passed by the FMA to other domestic authorities for specific purposes (including judicial proceedings or the imposition of sanctions), but prevents foreign authorities from acting in the same way in respect of information provided by the FMA. The information exchange provisions in the FMAA (Arts. 27a–27l) have the additional requirement that there should be a judicial review of the request for information by a foreign supervisor to ensure that the necessary conditions are met and that the competent judge of the Administrative Court must approve the execution of administrative assistance before the FMA is authorised to obtain the requested information from the holder of the information. However, the FMA have informed the assessors that this provision has not proved to be a barrier in their experience. That experience relates to the exchange of information for the purposes of securities supervision. The FMAA provisions also cover the exchange of information on AML/CFT matters, although they have never been used for that purpose. As noted above, the exchange of information between supervisors on AML/CFT matters will normally concern information on the extent of compliance by institutions with their obligations. All but two of the investment undertakings in Liechtenstein are exempted from due diligence obligations by Art. 4 of the DDA because they do not maintain share accounts or distribute shares (the assets all being held by the banks). Therefore, it is not surprising that there is little demand for exchange of information on securities business for AML/CFT purposes. Given the authorities experience that the provisions have not provided a barrier for information on securities supervision, and the limited demand for AML/CFT information exchange from regulated securities businesses, given the nature and structure of the business covered by the FMAA provisions, the assessors do not consider that this constitutes an unreasonable barrier to

information exchange. The existence of this provision, however, reinforces the recommendation that the authorities should harmonise the requirements for information exchange in the different statutes.

1149. The FMA have noted that the provisions in each of the statutes have not prevented information exchange as a matter of routine (although not in AML/CFT matters). There is jurisprudence to the effect that the "best efforts" of a recipient institution to protect information received from the FMA would be sufficient to satisfy the legal requirement that there should be no onward disclosure by the recipient authority (the FMA Act condition). However, this jurisprudence was not in the context of AML/CFT under the DDA, and there remains a danger that information exchange could be open to challenge, especially in the case of the FMAA, which requires written permission from the FMA and requires the FMA to cease all future cooperation in the event of a violation by the recipient (until remedial measures are put in place).

1150. In the case of banking, securities, and insurance, if the sector-specific laws apply, it would be possible for the FMA to pass confidential information to a foreign authority, since it is likely that, in those cases, the foreign supervisory authority would be able to meet the conditions for protecting confidential information. However, if the DDA powers were held to override the sector-specific laws, then the FMA would have to satisfy itself that the foreign authority had a "triple lock" provision equivalent to that in Art. 23 of the Public Enterprise Act. This would amount to an unreasonable barrier, since it is highly unlikely that any other country would have such a provision.

1151. In the case of lawyers and TCSPs, the DDA is the only statute that could permits the exchange of confidential information to a foreign regulatory authority, since the Professional Trustees Act and the Lawyers Act do not provide for the exchange of information. This is not a matter that has ever been tested—perhaps because the demand for confidential information to be exchanged between regulatory authorities, purely for AML/CFT matters is likely to be modest. Nevertheless, the fact remains that the restriction on the exchange of confidential information that is created by the requirement that the recipient authority should have confidentiality provisions equivalent to those in Art. 23 of the Public Enterprise Act under the DDA are such as to constitute an unreasonable or unduly restrictive condition.

FIU

1152. Art. 7, para. 2, lett. a) provides that the information requested must be in accordance with the provisions of the FIU Act and must not violate public order and other essential national interests.

1153. Conditions applicable to the requesting FIU must also be met. Before proceeding to exchange information, the FIU in Liechtenstein must ensure that the requesting FIU would grant a similar request from the FIU in Liechtenstein and guarantee that the information will only be used to combat ML, predicate offenses of ML, organised crime, and FT. Additionally, the Liechtenstein FIU must be satisfied that the information exchanged will only be forwarded after consultation with the Liechtenstein FIU and that the requesting FIU is subject to official and professional secrecy. Requests for information may only be acceded to where the Law on International MLA in

Criminal Matters does not apply. The last condition relates to situations where the subject of a request for information by a foreign FIU is already being processed through the formal MLA channels.

1154. It is the view of the assessors that these conditions are not unreasonable and unduly restrictive, since they are, to some extent, commonly applied by all FIUs, safe for some reservations with regard to the reference to official and professional secrecy (see discussion under criterion 40.8).

Police

1155. Mutual police assistance is not permitted on traditional refusal grounds: violation of public order, and essential national interests, tax matters, nonrespect of human rights and political, military, religious, or racist purposes. These restrictions are within the internationally accepted standards.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):

FIU

1156. Art. 7, para. 2, lett. a) of the FIU Act provides that the information requested must, among other conditions, not violate matters subject to fiscal interests.

1157. The FIU pointed out that this provision was introduced to safeguard information which is requested by a foreign FIU on behalf of a law enforcement or tax authority for purposes which are entirely extraneous to ML/FT matters. In such cases, the FIU may not exchange information with the foreign FIU. The authorities also clarified that this condition prohibits the FIU from disclosing information concerning the fiscal interests of the state and is not intended to protect the fiscal interests concerning the person in whose regard the request for information was made. In support of their position, the authorities referred to the clarifications provided by the Prime Minister of Liechtenstein in parliament in the process leading up to the adoption of the FIU Act in 2001, where the purpose of these two conditions was explained in more detail. Examples of requests for information involving tax matters were made available to the assessment team for inspection to confirm the explanation provided.

1158. The assessors are of the opinion that this provision should be amended to clarify the extent of the application of the condition relating to fiscal matters.

Police

1159. The fiscal exception rule applies the whole Liechtenstein law enforcement system, including the police and intelligence sector. Exception could be made for VAT-carousel related matters. The provisions in the DDA that, at the time of the 2007 MER, restricted information exchange where there were secrecy provisions or fiscal interests have been removed. There is no specific fiscal provision, although the general restriction relating to matters of essential interest to the State has been retained.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):

1160. As indicated under Sections 2 and 3 of this report, FIs, lawyers, accountants, and auditors are subject to confidentiality requirements under their sector-specific laws. For FIs, secrecy provisions are enshrined in Art. 14 of the BA, Art. 44 of the ISA, Art. 21 of the AMA, Art. 25 of the UCITSG, Art. 18 of the EIA, Art. 5 of the PSL, Art. 4a of the IMA, and Art. 15 of the IUA. Lawyers, trustees, and auditors are subject to similar provisions set out under Art. 15 of the Law on Lawyers, Art. 10 of the Law on Auditors, and Art. 11 of the Law on Trustees.

1161. For FIs, the secrecy provisions under the relevant sector-specific laws are identical and require members of governing bodies and employees of FIs to keep secret all facts that have been entrusted or become accessible to them as a result of the business relations with clients. A failure to comply with these provisions may result in criminal responsibility. The obligation of confidentiality, however, does not apply in respect of legal provisions regulating the provision of information to criminal courts, or supervisory authorities, as well as the provisions regulating the cooperation with other supervisors.

1162. For DNFBPs, the relevant provisions impose an obligation of secrecy on matters entrusted to the lawyer, auditor, or trustee on facts which he has learned in the course of his professional capacity and whose confidentiality is in the interest of the client. There right to such secrecy is subject to the applicable rules of procedure in court proceedings, and other proceedings before government authorities.

FMA

1163. For FIs, and in line with the provisions under sector-specific laws as mentioned above, Art. 28(4) of the DDA grants the FMA access to any information held by persons subject to the law that it may need to carry out its supervisory functions for purposes of the DDA. These supervisory functions include the passing of confidential information to foreign supervisors pursuant to Art. 37 of the DDA. A lack of provision of requested information by the person subject to the law may result in the imposition of an administrative fine by the FMA.

1164. For DNFBPs, the powers under Art. 28(4) of the DDA are not limited to nonconfidential information. As noted above, it can be considered as established that the FMA has the power to compel the production of confidential information held by DNFBPs based on provisions of the DDA, and that the FMA may share such information with foreign supervisory authorities. Outside the supervisory context the power of the FMA remains unclear.

FIU

1165. Art. 7, para. 2, let. a) of the FIU Act provides that the information requested must, among other conditions, not violate matters subject to secrecy. The authorities clarified that this condition is intended to restrict the disclosure of state secrets to other FIUs and not to protect the financial secrecy concerning the person in whose regard the request for information was made. Examples of requests for information involving other confidential information were made available to the assessment team for inspection to confirm the explanation provided. Nevertheless,

the assessors are of the view that the scope of the condition is not entirely clear from the text and could give rise to challenges. As noted elsewhere in this report the ability of the FIU to obtain information is also restricted by the provision of the FIU Act that subjects the obtaining of information to secrecy provisions.

Police

1166. The police have no direct access to confidential or privileged information. Any criminal investigation request to that end falls under the MLA regime.

Safeguards in Use of Exchanged Information (c. 40.9):

FMA

1167. The FMA is constrained by Art. 37, para. 4 of the DDA to use information received from foreign authorities only for specific purposes, namely:

- to verify compliance with due diligence requirements;
- to impose sanctions;
- in the framework of administrative proceedings concerning the appeal of decisions of a responsible authority; or
- in the framework of judicial proceedings.

1168. The FMA is subject to the confidentiality obligations of Art. 23 of the Public Enterprise Act, but this is overridden by the provisions relating to the passing of information to other authorities by Art. 3 of that Act. The difficulty, as discussed above, is that the provisions requiring equivalent confidentiality protections in foreign supervisory authorities refer to Art. 23 of the Public Enterprise Act and do not refer to the override in Art. 3.

FIU

1169. The FIU may only request information that is required for the purposes of the FIU Act. Information received from a foreign FIU may only be used by the FIU for the purposes as defined in the request. The officers of the FIU are bound to keep confidential information received in the performance of their functions pursuant to Art. 38 of the Secrecy Act (as discussed under criterion 26.7).

Police

1170. Beside the general confidentiality rules governing all operational police communications, mutual administrative assistance is purpose bound: shared data can only be used for the same purposes that they have been provided unless prior consent is given by the National Police (Art. 35.4 NPA).

Additional Element—Exchange of Information with Non-Counterparts (c. 40.10 and c. 40.10.1):

FMA

1171. There is no scope for the FMA to exchange information with foreign authorities that are not counterparts. All of the provisions for information exchange restrict such exchange to equivalent authorities. For example, the DDA Art. 37, para. 2 permits information exchange only to foreign financial market supervisory authorities competent authorities—a term that is not defined in the legislation.

1172. There are no provisions requiring the FMA to disclose the purpose of a request for information or the person on whose behalf it is made although it is the practice of the FMA to do so.

FIU

1173. The FIU Act does not provide for the power of the FIU to exchange information with noncounterparts.

Police

1174. As a general principle international police assistance can only relate to requests emanating from an authority having police qualifications and powers. Requests are normally motivated in that sense.

Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11)

1175. The FIU may obtain information from other competent authorities pursuant to a request from a foreign FIU.

International Cooperation under SR V (applying c. 40.1–40.9 in R. 40, c. V.5):

1176. The provisions described above in respect of ML also apply to terrorist financing.

Additional Element under SR V (applying c. 40.10-40.11 in R. 40, c. V.9):

1177. The provisions described above in respect of money laundering also apply to terrorist financing. The FIU may not exchange information on FT with non-counterparts.

Statistics (R.32)

FMA

1178. No statistics on information requests can be supplied since there have been no instances of information exchange by the FMA on AML/CFT matters.

FIU

Year	2009	2010	2011	2012	2013 (Q1)
Incoming foreign requests to the FIU	231	261	153	304	87
Requests to foreign FIUs	235	248	175	332	88

Effective Implementation

FMA

1179. The FMA is not unusual in its experience that it is rare for supervisors to exchange information on AML/CFT matters. The discussion on the legal provisions must therefore be theoretical and in the context that the FMA has successfully exchanged information with foreign counterparts on other matters.

1180. The conclusion of this analysis is that there is uncertainty about which laws may apply in the case of information exchange on AML/CFT matters. If the DDA is the law that applies, then it would appear to permit information exchange, subject to the apparently sever constraints imposed by the need for Art. 23 COPE equivalence. However, if the sector-specific laws apply, then information exchange would be less restrictive for banks, insurance, and securities business. The authorities consider that the DDA takes precedence, and this is the only statute that provides for the exchange of confidential information for DNFBPs. The DDA stipulates that the FMA is obliged to check that a receiving authority has a triple lock confidentiality provision equivalent to Art. 23 of the Public Enterprise Act and this will amount to a severe restriction if strictly applied.

FIU

1181. With regard to the FIU's ability to provide assistance in a rapid, constructive, and effective manner can be hampered by restricted secrecy provisions as discussed above. The circumstance that the FIU can only request additional information from reporting entities if a SAR has been submitted is not considered to be effective. The feedback received from FIUs of other countries was uneven. While several FIUs provided positive or neutral feedback regarding the assistance provided by the Liechtenstein FIU or indicated that they had not encountered any particular problem, some jurisdictions raised issues concerning the information received. This indicates that the FIU's ability to exchange information is to some extent limited to what is required under the standard. Given that the FIU's cooperation with foreign FIUs is a key component within the context of ML/FT risks present in Liechtenstein, the restrictions on secrecy provisions and the FIU's inability to request 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.

1182. The police supplied following statistics over 2009–2012 on incoming counterpart requests related to economic and financial crime (fraud, embezzlement, money laundering, corruption):

Statistics Table 8. Counterpart requests related to economic and financial crime (2009–2012)

2009	2010	2011	2012	Total
128	104	87	74	**393**

1183. As the statistics show, police-to-police cooperation is frequent, taking into account that the figures are actually restricted to economic/financial matters. The assistance rendered by the Liechtenstein police appears to be constructive and flexible, even if the more informal nature of this kind of cooperation does not allow for real investigative and incisive action. Within those parameters the formal refusal grounds are not uncommon and unreasonable.

8.1.1. Recommendations and Comments

- Harmonise the provisions regulating exchange of information by the FMA with foreign authorities to clarify confidentiality obligations applicable to the FMA and to specify any other conditions that need to be met for the exchange of information with foreign authorities. Remove 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.

- The reference in Art. 4 para.3 of the FIU Act which restricts the power of the FIU to obtain only information which is not subject to legal provisions relating to the protection of secrecy should be removed. The authorities should also consider introducing a provision in the law which states that any information that is provided by reporting entities to the FIU for any purpose shall not be subject to any legal provisions on secrecy;

- Consider introducing an express provision in the FIU Act empowering the FIU to obtain additional information from reporting entities following a request for information from a foreign FIU, irrespective of whether a SAR has been submitted. The provision should indicate that information requested is to be provided without delay;

- The conflicting provisions regarding the FMA's ability to exchange information with the FIU should be removed to ensure that the FIU has proper access to such information in the context of international cooperation;

- Art. 7, para. 2, lett. b) of the FIU Act should be amended to clarify the extent of the application of the condition relating to secrecy and fiscal matters;

- The FIU should consider introducing a provision in the FIU Act to permit the exchange of information with non-counterparts.

8.1.2. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relative to s.6.5 underlying overall rating
R.40	**PC**	Issues concerning the FMA: • 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; Issues concerning the FIU: • The FIU's access to information could be restricted by secrecy provisions (Art. 4(3) of the FIU Act); • Ambiguity in the FIU Act (Art. 7) concerning secrecy and exchange of information; • 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; **Effectiveness** • Concerns on the quality of information exchanged by the FIU expressed by a number of jurisdictions; • 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.
SR.V	**PC**	Issues concerning the FMA: • 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; Issues concerning the FIU: • The FIU's access to information could be restricted by secrecy provisions (Art. 4(3) of the FIU Act); • Ambiguity in the FIU Act (Art. 7) concerning secrecy and exchange of information; • Limitations noted with regard to FMA's access to information on behalf of

		third parties and sharing of information limits ability of the FIU to make inquiries on behalf of foreign counterparts; **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.

9. OTHER ISSUES

9.1. Resources and Statistics

Recommendation 30

FMA

1184. The FMA is funded by a direct contribution from the state (49 percent) and the remainder covered by supervisory levies, fees, and services.

1185. Total staff employed within the FMA was 72.5 full-time equivalents at the end of 2012 (75.6 at the time of the evaluation). This compares with 29 staff (plus eight trainees) at the time of the 2007 MER. Approximately 50 staff work in the four supervisory divisions split roughly equally between banks, insurance, securities, and other institutions (including TCSPs).

1186. The table below shows the numbers of positions approved in the four main supervisory divisions since 2008. Over this period, the total staff increased from 56.7 to 76.6.

1187. FMA staff receives training in AML/CFT matters annually either internal or external training. Those attending external courses and seminars disseminate training material to other FMA staff and many staff has AML/CFT expertise from previous employment.

1188. The resources available to the FMA are not sufficient to allow the FMA to undertake an appropriate degree of supervision of AML/CFT compliance by institutions—even allowing for the fact that most onsite inspections are conducted by mandated audit firms. DNFBP, for example, despite being a high risk sector, is subject to a less frequent inspection cycle than FIs because the relevant division in FMA would not have the resources to assess the reports from all DNFBPs.

1189. The total staff budget should be sufficient to accommodate more onsite inspections by FMA staff. The allocation of staff to different divisions should be based on the risk of different sectors and be such as to enable the FMA to conduct (or arrange for mandated audit firms) to conduct inspections according to the relative risks of sectors, institutions and activities. Training should be subject to an adopted policy which uses an annual overall training needs assessment, combined with annual assessments of staff training aspirations and needs to practice a training

plan that should be monitored—with AML/CFT skills being included within the wider skills context.

FIU

1190. The FIU is headed by the director with the assistance of the deputy director. The main units of the FIU are the Strategic Analysis Unit and the Operational Analysis Unit. The Operational Analysis Unit is headed by the deputy director and is composed of four analysts. The Strategic Analysis Unit is composed of two analysts. An analyst from each unit is also assigned responsibilities within the other analysis unit. The International Affairs Unit is composed of one person. The FIU also includes a secretariat with one administrative officer. The total number of persons employed by the FIU is 10. The current staff constitutes a forty percent increase since the last evaluation in 2008.

1191. The internal structure of the FIU is defined by the director, and endorsed by the prime minister. It is incorporate within the overall system of structures of all government agencies by the public Office of Personnel. There is a specific process for this activity and respective software run by the Office of Personnel that manages the structuring process to ensure its legality and transparency.

1192. All FIU employees are public officials employed on an indefinite basis. All staff have access to the necessary IT infrastructure, the FIU has access to commercial databases (LexisNexis, World-Check) and has developed, jointly with the Basel Institute on Governance, the Asset Recovery Intelligence System (ARIS) which allows for additional use of open-source information and the detection of relevant networks.

1193. The FIU conducts a pre-selection procedure with potential candidates with the aim to select competent and loyal staff members. It can conduct background checks with the police. The formal hiring procedure is conducted via the Office of Human and Administrative Resources in accordance with the rules for hiring public servants in the principality. The recruitment procedure is merit-based and open also to foreign citizens. In fact, the current and all previous FIU directors and deputy directors were Swiss nationals which guarantees their independence. The background of the staff members reflects the operational needs of the FIU: lawyers and economists, police officers and experts with a university degree in international affairs, and staff with experience in compliance in the private sector. The staff fluctuation in the FIU is low; some current staff members had already joined the FIU at the date of its establishment. Foreign languages spoken by staff members include: English, French, Spanish, and Bosnian. The compensation of Liechtenstein public servants is adequate and there is no competition with salaries in the private sector in this regard.

1194. The FIU regularly conducts internal training courses for its staff members. The operational analysts have also attended the Swiss Criminal Analysis Course and the Swiss Police Institute in Neuchâtel (Switzerland).

Public Prosecutor's Office and Investigating Judges

1195. The Public Prosecutor's Office counts seven prosecutor magistrates that serve all instances of the courts in all criminal matters (including ML/TF). They have a high professional standard and are qualified to deal with criminal cases of all sorts. As a matter of policy and to ensure continuity, the public prosecutor's office is not structured in specialised sections. The judiciary resources appear sufficient. Four of the 14 judges at the Court of Justice serve as investigating judges/magistrates; these four judges also are specialised in mutual legal assistance.

Police

1196. The police count 120 staff, with 7 investigators assigned to financial and economic affairs. They appear sufficiently trained and capable. There does not seem to be abnormal backlog of cases under investigation.

Recommendation 32

FMA

1197. The FMA maintains statistics on onsite inspections undertaken and on sanctions applied to individual institutions. It does not maintain regular statistics on requests for information on AML/CFT because such requests are so rare but it does maintain statistics on information requests more generally.

FIU

1198. The FIU maintains statistics on SARs received by the FIU, including a breakdown of the type of FI, DNFBP, or other business or person making the SAR and a breakdown of SARs analysed and disseminated.

Police/Public Prosecutor's Office

1199. The authorities provided comprehensive and detailed statistics on ML/TF investigations, prosecutions and convictions, freezing and confiscation of criminal proceeds, property frozen under the UNSCR lists, and MLA and extradition traffic.

9.1.1. Recommendations

- FMA should review the level of staffing according to the recommendations of this report. Staff should be allocated taking account of the AML/CFT risk of different sectors;

- FMA should adopt a policy with regard to training on AML/CFT and monitor its implementation.

	Rating	Summary of factors underlying rating

R.30	**LC**	• 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.
R.32	**C**[83]	

9.2. Other Relevant AML/CFT Measures or Issues

1200. Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report.

9.3. General Framework for AML/CFT System (see also section 1.1)

1201. Assessors may use this section to comment on any aspect of the general legal and institutional framework within which the AML/CFT measures are set, and particularly with respect to any structural elements set out in section 1.1. Where they believe that these elements of the general framework significantly impair or inhibit the effectiveness of the AML/CFT system, these should be brought forward in the relevant sections of the report and cross-referenced with this section.

[83] 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 3rd round report on Recommendation 38.

Annex 1. Ratings of Compliance with FATF Recommendations

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 3rd round evaluation report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating[84]
Legal systems		
1. Money laundering (ML) offense	**PC**	**Effectiveness** • Level of proof required to establish the predicate offense; • Only one conviction since 2007; • No autonomous ML prosecutions.
2. ML offense—mental element and corporate liability	***LC***	• *There is no criminal liability of corporate entities;* • *Liechtenstein has not yet developed its own case law on money laundering.*
3. Confiscation and provisional measures	**LC**	• 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); • 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; **Effectiveness** • Confiscation hampered by high burden of proof to establish the link between the illegal assets and the specific predicate offenses that generated them; • Delaying procedural tactics and abuse of legal privilege concerns (dual capacity).

[84] 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	**PC**	• 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; • 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; • 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.
5. Customer due diligence (CDD)	**PC**	• 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; • 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; • The blanket exemptions for CDD under Art. 10 of the DDA are not permissible under the FATF standard; • 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; • 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; • High threshold of CHF 25,000 for identification of existing anonymous or bearer passbooks, accounts, or custody accounts; • CDD obligation for occasional transactions only

		extends to cash transactions; **Effectiveness** • 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); • Due diligence measures fall short of the enhanced due diligence measure**s** required for higher risk categories including issues related to verification that weaken CDD measures; • Lack of emphasis on understanding the nature and purpose of the relationship, including understanding related legal structures and the relationship to the beneficial owner; • Risk indicators issued to assist FIs in defining risk categories for its customers and transactions do not seem practical.
6. Politically exposed persons (PEPs)	**LC**	**Effectiveness** • General (sometimes sole) reliance on commercial databases for the identification of PEPs; sometimes with infrequent reviews and minimal use of other means of identification.
7. Correspondent banking	**LC**	• Provisions on cross-border correspondent banking do not apply for respondent institutions in other European Economic Area (EEA) member states; • No requirement for Liechtenstein correspondent institutions to ensure that respondent institutions anti-money laundering (AML)/counter-financing of terrorism (CFT) controls are adequate and effective.
8. New technologies and nonface-to-face business	**LC**	• 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; • 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.
9. Third parties and introducers	**LC**	• Presumption that all European Union (EU) and EEA countries adequately apply the FATF

		Recommendations.
10. Record keeping	**LC**	• No express obligation to keep business correspondence; • No measures in place to ensure that transaction records permit the reconstruction of individual transactions in all cases.
11. Unusual transactions	**LC**	• Lack of clear guidance and criteria pertaining to complex transactions; • Issues of effectiveness.
12. DNFBP–R.5, 6, 8–11	**PC**	• 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; • 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; • The blanket exemption for CDD under Art. 10 of the DDA is not permissible under the FATF standard; • 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; • No express obligation to have in place policies or measures to prevent use of technological developments for ML/FT; • 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; • No express obligation to keep business correspondence; • No specific requirement that records need to be sufficient to permit the reconstruction of individual transactions; • Both for land-based and online casinos, in many

		instances the threshold for carrying out CDD on transactions is too high; • 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; • 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; **Effectiveness** • Inconsistent application of due diligence measures across DNFBPs, with gaps in implementation of essential measures; • 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; • Lack of emphasis on understanding the nature and purpose of the relationship, including understanding related legal structures and the relationship to the beneficial owner; • 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.
13. Suspicious transaction reporting	**LC**	**Effectiveness** • The automatic five-day freezing on filing a suspicious action report (SAR) may have an adverse effect on the reporting mechanism; • 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; • Inadequate understanding of the reporting requirement by some FIs.
14. Protection and no tipping-off	**LC**	• The tipping-off prohibition does not apply to information related to a SAR.
15. Internal controls, compliance, and audit	***LC***	• *No requirement for financial institutions to screen for probity when hiring new employees;*

		• *No express requirement for financial institutions to maintain adequately resourced the requisite internal audit function*
16. DNFBP–R.13–15 and 21	**PC**	• There is no specific obligation for the compliance officer to be at a management level; • Art. 11(6) of the DDA does not require enhanced CDD with respect to persons from (as opposed to in) high risk countries; • No sufficient wide power to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries; • The tipping-off prohibition does not apply to information related to a SAR; **Effectiveness** • Inadequate understanding of reporting requirements by DNFBPs: • Low number of SARs, except for TCSPs; • Internal programs are not developed by all DNFBPs: • Training is not undertaken by all DNFBPs: • Audit functions to test compliance are not utilised by all DNFBPs.
17. Sanctions	**LC**	• Administrative fines for institutions are not proportionate or dissuasive; **Effectiveness** • Use of sanctions too limited to act as effective, dissuasive and proportionate deterrence to non-compliance.
18. Shell banks	***LC***	• *Licensing requirements do not provide sufficient safeguards to exclude the possibility of establishing a shell bank in Liechtenstein.*
19. Other forms of reporting	***C***	-
20. Other NFBP and secure transaction techniques	***C***	-
21. Special attention for higher risk countries	**LC**	• Art. 11(6) of the DDA does not require enhanced CDD with respect to persons from (as opposed to in) high risk countries;

		• No sufficiently broad power to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries.
22. Foreign branches and subsidiaries	**C**	-
23. Regulation, supervision, and monitoring	**LC**	**<u>Effectiveness</u>** • 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; • Absence of a risk-based approach to the allocation of inspection resources to different institutions reduces the effectiveness of supervision; • Limited aggregate off-site analysis of trends and patterns revealed by information received from annual inspections.
24. DNFBP—regulation, supervision and monitoring	***LC***	• *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;* • *No corporate criminal liability is defined;* • *Proportionality and effectiveness of sanctions system is restricted by significant gaps in the ladder of available sanctions.*
25. Guidelines and Feedback	***LC***	• *No written guidelines issued by the FIU regarding SAR reporting;* • *FMA guidelines should be updated, particularly to provide guidance on enhanced due diligence;* • *No guideline has been issued with regard to CFT requirements.*
Institutional and other measures		
26. The FIU	**PC**	• 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; • 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; • 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); **Effectiveness** • 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.
27. Law enforcement authorities	***LC***	• *No ML convictions as a result of absence of autonomous money laundering prosecutions (impacts on effectiveness).*
28. Powers of competent authorities	***C***	-
29. Supervisors	***LC***	• *No specific provisions that allow the FMA to ensure that financial institutions apply AML/CFT measures consistent with FATF Recommendations across financial groups.*
30. Resources, integrity, and training	**LC**	• 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.
31. National cooperation	**LC**	• Issues of financial secrecy (noted under R.4) affect the effectiveness of domestic exchange of information; • Cooperation FMA/FIU needs enhancement.

32. Statistics	**C**[85]	
33. Legal persons—beneficial owners	**PC**	• The system in place does not ensure adequate transparency on beneficial ownership of legal persons; • 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; • Powers of FMA to access information restricted to supervisory functions; • Measures in place for bearer shares are not adequate and commensurate to risk of ML; **Effectiveness** • 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).
34. Legal arrangements—beneficial owners	**LC**	• Restrictive legal framework concerning the FMA' access to beneficial ownership information; **Effectiveness** • 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.
International Cooperation		
35. Conventions	**LC**	Implementation of Vienna/Palermo Convention: • Art. 98a CPC does not cover information gathering with some relevant categories, such as payment system providers, E-money institutions, insurance mediators and

[85] 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 3rd round report on Recommendation 38.

		DNFBPs; Implementation of UN International Convention for the Suppression of the Financing of Terrorism: • R.5-related issues (Art. 18.1.b of the Convention).
36. Mutual legal assistance (MLA)	**LC**[86]	• Not all DDA subjects are under the obligation to supply relevant information as provided by Art. 98a CPC; **Effectiveness** • Issues of legal privilege and confidentiality in dual capacity situations; • Particularly with regard to obtaining bank record, the effectiveness of the legal procedures could be challenging in the presence of dilatory tactics.
37. Dual criminality	***C***	-
38. MLA on confiscation and freezing	***LC***	• *Restricted confiscation for instrumentalities also in MLA context;* • *No consideration of asset forfeiture fund.*
39. Extradition	**C**	-
40. Other forms of cooperation	**PC**	Issues concerning the FMA: • 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; Issues concerning the FIU: • The FIU's access to information could be restricted by secrecy provisions (Art. 4(3) of the FIU Act); • Ambiguity in the FIU Act (Art. 7) concerning secrecy and exchange of information; • Limitations noted with regard to FMA's access to information on behalf of domestic third parties and

[86] 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 3rd round report on Recommendation 28.

		sharing of information limits ability of the FIU to make inquiries on behalf of foreign counterparts; **Effectiveness** • Concerns on the quality of information exchanged by the FIU expressed by a number of jurisdictions; • 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.

Nine Special Recommendations (SR)		
SR.I Implement UN instruments	**LC**	Implementation of UN International Convention for the Suppression of the Financing of Terrorism: • R.5 related issues (Art. 18.1.b of the Convention); Implementation of UN Security Council Resolutions (UNSCRs): • Scope of application of International Sanctions Act (ISA) 2008 restricted in relation to UN Res. 1373; • No procedures in place for domestic designations.
SR.II Criminalise terrorist financing	**LC**	• Sanctions are not proportionate or dissuasive.
SR.III Freeze and confiscate terrorist assets	**PC**	• Scope of application of ISA 2008 restricted in relation to UN Res. 1373; • No procedures in place for domestic designations; • No public guidance on the procedures for delisting from the Al-Qaeda and Taliban UN list; **Effectiveness** • Effectiveness affected by deficiencies in CDD application and transparency of legal persons and arrangements.
SR.IV Suspicious transaction reporting	**LC**	**Effectiveness** • Inadequate understanding of the reporting

		requirement by some FIs.
SR.V International cooperation	**LC**[87]	• Not all DDA subjects are under the obligation to supply relevant information as provided by Art. 98a CPC; Issues concerning the FMA: • 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; Issues concerning the FIU: • The FIU's access to information could be restricted by secrecy provisions (Art. 4(3) of the FIU Act); • Ambiguity in the FIU Act (Art. 7) concerning secrecy and exchange of information; • Limitations noted with regard to FMA's access to information on behalf of third parties and sharing of information limits ability of the FIU to make inquiries on behalf of foreign counterparts; **Effectiveness** • Issues of legal privilege and confidentiality in dual capacity situations; • Particularly with regard to obtaining bank record, the effectiveness of the legal procedures could be challenging in the presence of dilatory tactics; • 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.
SR.VI AML/CFT requirements for money/value transfer services	***LC***	• *Threshold for obtaining customer identification is too high.*

[87] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition, it has also taken into account the findings from the 3rd round report on Recommendations 37 and 38.

SR.VII Wire transfer rules	**C**	-
SR.VIII Nonprofit organisations	**PC**	• No review to understand the activities, size, and other relevant features of nonprofit organisations (NPOs) in Liechtenstein in order to determine the features and types of organisations that are at risk of being misused for FT; • No periodic re-assessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities; • Not all common-benefit entities are subject to supervision; • No measures in place to sanction violations of oversight measures or rules by NPOs or persons acting on their behalf; **Effectiveness** • Supervision of foundations does not cover FT issues.
SR.IX Cross-Border Declaration and Disclosure	**PC**	• 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; • The conditions to seize are more restrictive/different than the FATF requirement to "stop or restrain"; • Sanctions are not proportionate and they are not applicable sanctions in the case of legal persons; • The shortcomings identified in connection with Recommendation 3 and Special Recommendation III apply in the context of Special Recommendation IX; **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 SRIX best practices.

Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 and 2)	• Pursue proactively money laundering as an autonomous offense, in order to create jurisprudence on the burden of proof to establish the predicate offense; and • Consider increasing the effectiveness of the repressive approach by attenuating the formal high level of proof by amending the list-based money laundering offense to an all-crimes offense.
2.2 Criminalisation of Terrorist Financing (SR.II)	• The penalties be increased to enhance their deterrent effect.
2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)	• The incomplete coverage of Art. 98a CPC needs to be addressed to include all persons and entities subject to the DDA, more in particular lawyers, auditors and trustees; • The legislator examine effective countermeasures against abuse of the legal privilege protection in case of dual capacity; • As with the money laundering offense, develop autonomous procedures as a correction to the reliance on foreign factors; • The legislator considers extending the principle of the sharing or reversal of proof, now provided in Art. 20, para. 2 and 3 PC, to all serious offenses or crimes in all circumstances in the context of an *in rem* procedure; • Exclude the auditors, who have no legal representation function, from the scope of legal privilege regime envisaged by article 108 CPC Compliance with Recommendation 3.
2.4 Freezing of funds used for terrorist financing (SR.III)	• The scope of application of the ISA 2008 is not restricted to certain countries by removing this general clause from the ISA; • Issue guidance on the procedures for de-listing from the Al-Qaeda and Taliban UN list. • Procedures to be followed for drafting domestic lists are

	elaborated.
2.5 The Financial Intelligence Unit and its functions (R.26)	• The FIU should take measures to ensure that when SARs are submitted they always contain protective markings; • The provisions in the FIU Act which deal with the FIU's access to information from other competent authorities should require that such information is provided on a timely basis; • The provisions (in sector-specific laws) restricting the exchange of information between the FMA and the FIU should be revised; • Art. 6 of the FIU Act should be amended to clearly state that competent authorities are required to provide information to the FIU when they are so requested; • The reference in Art. 4 para. 3 of the FIU Act which restricts the power of the FIU to obtain only information which is not subject to legal provisions relating to the protection of secrecy should be removed to avoid any ambiguity. The authorities should also consider introducing a provision in the law which states that any information that is provided by reporting entities to the FIU for any purpose shall not be subject to any legal provisions on secrecy; • The authorities should consider including specific sanctions in the DDO for failure to provide additional information when requested by the FIU; • The FIU should consider implementing a system whereby information provided by reporting entity is submitted electronically and integrated automatically into the IT system of the FIU; • The FIU should not be required to disseminate the SAR itself to the OPP as stated in Art. 5, para 1, let. b) of the FIU Act; • Authorities could consider to conduct a review to determine whether the low number of prosecutions and absence of convictions resulting from FIU notifications is related to the quality of the disseminated reports; • The FIU should regularly request feedback from foreign FIUs on the quality and usefulness of information provided;

	• Reference to secrecy and fiscal matters within the power of the FIU to exchange information with foreign FIUs should be clarified.
2.6 Law enforcement, prosecution and other competent authorities (R.27 and 28)	
2.7 Cross-Border Declaration and Disclosure (SR IX)	• Apply the requirements to containerised cargo and to the mailing of currency; • Align the seizure requirements to fully comply with the power to stop or restrain the currency when there is a suspicion of ML/FT or when there is a false disclosure; • Introduce sanctions that are proportionate to the undeclared amount of funds (for example, by adding to the existing fixed sanction, a pecuniary sanction expressed in percentage to the undeclared amount) and establish sanctions in the case of legal persons; • Ensure effective implementation of the disclosure requirements at the border with Switzerland; • Establish training program and implement SRIX best practices.
3. Preventive Measures–Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5–8)	• The authorities should formulate more practical and broadly defined risk indicators (i) to ensure that even the slightest indication of risk results in a review of the categorisation for a given customer, business relationship or service; (ii) to promote a better understanding amongst the industry as to what "risk" is; and (iii) to assist in applying more consistent approach by FIs to defining the various risk categories; • Revise Art. 5(2)(b) of the DDA to require the application of CDD measures also to occasional transactions that are not cash transactions; • For customers that are natural persons, introduce an express legal obligation for FIs to determine in all cases whether a customer is acting on behalf of another person, and to take reasonable steps to obtain sufficient identification data to verify the identity of that other person.

	• Verification measures for legal persons should be strengthened, and incorporate the methods suggested in the General Guide to Account Opening and Customer Identification; • Art. 11 of the DDO should be amended to require verification measures for beneficial owners to be based on relevant data and information obtained from reliable source; • Art. 8(2) of the DDA should be revised to impose an obligation on persons subject to the law to carry out reviews of existing records as part of their ongoing CDD; • The blanket exemption for CDD under Art. 10 of the DDA should be removed. Simplified CDD measures should be allowed only in cases of a proven low risk and at least some minimum level of CDD should be required to be carried out in all cases. For foreign customers, simplified CDD should be allowed only where Liechtenstein (as opposed to the FI) is satisfied that the country in which the customer is located complies with and effectively implements the FATF standard; • Art. 18(2) should allow only for verification but not identification measures to be delayed in certain circumstances. The possibility of delayed verification should be limited to situations where it can be assured that the delayed measures are carried out as soon as reasonably practicable, and all aspects of the ML risks are effectively managed. The legal framework under the DDA should set out an express requirement to apply CDD measures to all existing customers on at appropriate times, and on the basis of materiality; • The threshold of CHF 25,000 for identification of existing anonymous or bearer passbooks, accounts, or custody accounts should be eliminated; • For business relationships with PEPs or beneficial owners that are PEPs consider aligning the provisions of the DDA and the DDO to set out an express obligation for FIs to establish the source of wealth in all cases; • Art. 11(5) of the DDA and Art. 16 of the DDO should also extend to correspondent relationships with respondent institutions in other EEA member states;

	• Art. 11(5)(b) of the DDA should be amended to require FIs not only to assess the respondent institutions AML/CFT controls before entering into a cross-border banking relationship, but also to ensure that such controls are adequate and effective; • Art. 9 (2) of the DDA should set out an obligation for FIs to have in place policies or measures to prevent use of technological developments for ML/FT; • Put in place provisions to require FIs to implement policies and procedures to address the risks associated with non-face-to-face transactions (as opposed to business relationships) as part of the ongoing due diligence; • Consider whether the definition of beneficial owners under Art. 2 of the DDA and Art. 3 of the DDO should be revised to expressly cover the settlor of trusts, regardless of whether they maintain express control powers; • Commensurate with the high risk characteristics of business activities and customers in Liechtenstein, the FMA should compel Liechtenstein FIs to increase their due diligence focus towards the beneficial owner of the customer, including through verification measures; • Consider means of ensuring that FIs develop more thorough customer profiles based on reliable information and documentation, including by gaining a thorough understanding of how a legal entity customer fits into a structure and the relationship between the customer and the beneficial owner and other relevant parties; • Regarding information and documentation necessary to understand the relationship amongst legal entity customers, intermediaries, and beneficial owners, particularly in the case of foreign parties, consider clarifying what information and documentation is necessary to effectively undertake this task; • Consider means of ensuring that FIs are able to compel any relevant due diligence documentation, including documentation beyond the minimum requirement, from customers represented by intermediaries, or otherwise; • Consider requiring FIs to undertake periodic reviews of CDD information, based on risk, to augment industry practice of ad hoc review procedures;

	• Consider requiring the compliance function within an FI to take an active role in the customer on boarding and transaction monitoring and review processes, and to require compliance and management approval according to risk; • Consider requiring FIs applying simplified due diligence to obtain beneficial ownership information, information on the structure of the client, and other information necessary to understand the relationship, as well as to conduct periodic reviews of the customer; • Consider requiring FIs to undertake internal institution risk assessments of all customer relationships and transactions, and any other relevant factors, on a periodic basis, which should then inform internal policies and assist in managing customer risk; • Consider requiring FIs to proactively apply complete CDD on legacy customers.
3.3 Third parties and introduced business (R.9)	• Liechtenstein should take a more independent approach to determining from which countries intermediaries may be for purposes of introduced business and reliance on the introducers CDD measures. • The authorities should conduct an assessment of the supervisory framework and of the CDD measures in place in the concerned countries where the third parties are located and limit the location of third parties to those countries that have a satisfactory supervisory framework and CDD measures.
3.4 Financial institution secrecy or confidentiality (R.4)	• Undertake a review of all secrecy provisions and harmonise them with AML/CFT-related requirements and responsibilities, in order to avoid any conflict of provisions or ambiguities. Clarify that DDA overrides all secrecy provisions of sector-specific laws. • Eliminate any reference to secrecy as a condition for obtaining information (Art. 4) and for the exchange of information with foreign FIUs (Art. 7). • Clarify that the secrecy provision enshrined in sector specific laws do not inhibit FI's ability to share confidential information with other FIs in cases where this is required under FATF Recommendations 7 or 9, for example where a Liechtenstein FI is a respondent institution or is relied upon by a foreign FI to carry out some of the CDD measures;

	• Expressly grant the FMA the legal power to share otherwise confidential information domestically for purposes of AML/CFT, either by amending sector specific laws or by clarifying in the DDA that the FMA's powers under Art. 36 supersede any secrecy provisions in other laws. • Remove 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. • Determine whether the lengthy appeals process for orders by the FMA to provide confidential information could constitute an obstacle to the effective implementation of the FATF Recommendations and if so, take measures to address this issue.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• Revise the legal framework to also require the keeping of business correspondence ; • Consider revising the legal framework to include an express power by the FMA or another competent authority to extend the record retention period; and • Revise the legal framework to ensure that transaction records are detailed enough to permit the reconstruction of individual transactions in all cases.
3.6 Monitoring of transactions and relationships (R.11 and 21)	Recommendation 11: • Consider further clarifying what types of transactions might be considered "complex"; • Consider requiring a financial institution's compliance function to approve transactions requiring investigation or clarification; • Consider requiring incoming transactions incongruent with the customer profile be frozen until investigated and cleared; • Consider requiring documenting all transactions and associated clarifications with the customer profile, or, if maintained in a separate system, referenced in the customer profile and immediately accessible. Recommendation 21: • Art. 11(6) of the DDA should be further revised to require enhanced CDD not only with respect to persons in but also to persons from high risk countries;

	• Ensure that FIs understand the obligation to carry out enhanced CDD under Art. 11(6) of the DDA as mandatory; • Grant the government or any authority in Liechtenstein a broader power to issue and enforce countermeasures in relation to transactions or business relationships involving high risk countries.
3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, and SR.IV)	Recommendation 13 and Special Recommendation IV • The FIU should continue to undertake a thorough analysis of banks' level of reporting to identify concretely which issues inhibit reporting and, where necessary, implement targeted measures to resolve these issues. The FIU should also continue organising awareness-raising activities, which are already an integral part of the FIU's activities, as a matter of priority to further enhance the reporting regime; • Banks' reporting patterns should be subject to greater attention by the FIU to determine to what extent banks submit SARs only when information gathered from public sources indicates that a customer may have been involved in criminal activities. The assessors encourage the FIU to continue holding meetings with banks on an individual basis to discuss issues relating to reporting. Special emphasis should be made on the identification of suspicious activities or transactions that are not necessarily linked, either directly or indirectly, to a particular criminal activity; • The FIU should review the automatic freezing mechanism which applies upon the submission of a SAR. The review should include extensive consultation with all reporting entities. This review should inform the FIU on how the relevant legal provisions are to be amended; • The FIU should consider conducting a formal assessment to determine whether the reporting of FT suspicions should be higher; • The FIU should consider maintaining statistics on the number of reported SARs related to a suspicious transaction which is to be executed. This would enable the FIU to determine the extent to which Art. 18, para. 1 of the DDA is being complied with.

	Recommendation 14 • Art. 18, para. 3 of the DDA should be amended to extend the tipping off prohibition to person's directors, officers and employees (permanent or temporary) of a reporting entity as required under c.14.2. Additionally, the prohibition should explicitly apply not only to the SAR but also to related information.
3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)	• Provide guidance to FIs to clarify what additional measures could be taken in cases where a foreign branch or subsidiary is not in a position to comply with the DDA provisions.
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17, and 25)	• Consider amending the DDA to clarify that the powers to undertake inspections and to obtain information for the purpose of administering the Act override any confidentiality obligations in other legislation (preferably also identifying and amending such provisions) (R29); • Consider providing further detail on the meaning of the term "inspection," so as to clarify the rights and obligations of the FMA, and mandated audit firms as well as the subjects of inspections, when inspections are conducted (R29); • Amend the guidance to mandated audit firms to require such firms to adopt best practices with regard to the reviews of board papers and minutes, training materials, monitoring and IT systems, and internal control documents (R23); • Introduce a procedure further to mitigate the risk of regulatory capture of the audit firms by regulated persons, including a rotation requirement and more systematic oversight by the FMA, which would include regular reviews of their performance, rating, benchmarking of their findings, accompanying them from time to time and reviewing their working papers (R23); • Include the documents evidencing the source of funds and wealth in the list of required documents listed on the FMA web site and include in the FMA internal procedures manuals a specific and explicit requirement that the source of wealth and funds should normally be checked. • Consider extending the sector specific guidance to banks (R23);

	• Increase the number of inspections undertaken by FMA staff (R23); • Develop the risk-based approach by inviting the AML Committee to prepare a risk assessment on an annual basis for adoption by the board to inform an overall supervisory strategy for AML/CFT and thereafter as the basis for determining the scope and frequency of inspections on the basis of risk, the information required by a new more comprehensive off-site reporting regime, focusing on the key risk mitigation policies and procedures of regulated firms; the allocation of FMA resources to those divisions dealing with the institutions posing the highest risk and the detail given in guidance, so that it is focussed on products and services of higher risk and provides greater clarity as to the FMA's expectations (R23); • Amend the definition of control in the sector based laws to make sure that any person exercising substantial influence on management, regardless of their shareholding or nominal title, should be subject to the prior approval of the FMA on the basis of integrity and competence (R23); • Review the upper limit on fines in the case of companies so as to ensure it is proportionate and dissuasive (R29); • Review the resources of the FMA in the light of the recommendations in this report with a review to allocating resources within the FMA on the basis of risk and taking account of any savings that may accrue to regulated firms, as well as the FMA as a result of a risk based approach to the frequency and scope of onsite inspections (R23).
3.11 Money value transfer services (SR.VI)	
4. Preventive Measures– Nonfinancial Businesses and Professions	
4.1 Customer due diligence and record keeping (R.12)	• Consider revising the definition of beneficial owners under Art. 2 of the DDA and Art. 3 of the DDO to expressly cover the settlor of trusts, regardless of whether they maintain express control powers; • Art. 11 of the DDA should be amended to clearly require verification measures for beneficial owners to be based on reliable sources and not merely on the signature of the contracting party;

	• Both for land-based and online casinos, the requirement to link certain transactions to the customer due diligence file should at a minimum apply to all transactions covered under Recommendation 12 that are equal to or in excess of 3,000 euros; • Require both land-based and online casinos to identify and take reasonable measures to verify the identity of the beneficial owner as required under Recommendation 12; • Art. 8(2) of the DDA should be revised to impose an obligation on persons subject to the law to carry out reviews of existing records as part of their ongoing CDD, in particular for higher risk categories of customers or business relationships. Such an obligation would augment the industry practice of ad hoc reviews; • For customers that are natural persons, introduce an express legal obligation for DNFBPs to determine in all cases whether a customer is acting on behalf of another person and to take reasonable steps to obtain sufficient identification data to verify the identity of that other person. • The blanket exemption for CDD under Art. 10 of the DDA should be removed. Simplified CDD measures should be allowed only in cases of proven low risk, and in all cases at least some minimum level of CDD should be carried out by the DNFBPs in Liechtenstein. Simplified CDD in relation to foreign customers should be allowed only in cases where Liechtenstein (as opposed to the DNFBP) is satisfied that the foreign country in which the foreign customer is located complies with and effectively implements the FATF standard; • Art. 18 (2) should be amended to allow only for verification but not identification measures to be delayed in certain circumstances, and should limit the possibility to delay such verification measures to situations where it can be assured that the delayed measures are carried out as soon as reasonably practicable, and all aspects of the ML risks are effectively managed; • The legal framework under the DDA should set out an express requirement to apply CDD measures to all existing customers on the basis of materiality; • Art. 9(2) of the DDA should be rephrased to set out an obligation for persons subject to the law to have in place policies or measures to prevent use of technological developments for ML/FT;

	• Consider the need for revising Art. 5(2)(b) of the DDA to require the application of CDD measures also to occasional transactions that are not cash transactions; • For business relationships with PEPs or beneficial owners that are PEPs, consider aligning the provisions of the DDA and DDO to set out an express obligation for DNFBPs to establish the source of wealth in all cases; • Consider revising the legal framework to include an express power by the FMA or another competent authority to extend the record retention period; to also require the keeping of business correspondence; and to ensure that transaction records are detailed enough to permit the reconstruction of individual transactions in all cases; • Require land-based and online casinos to determine in all cases required under Recommendation 12 whether a customer or beneficial owner is a politically exposed person; • Consider requiring DNPFBPs to increase their due diligence focus towards the beneficial owner of the customer; • Consider means of ensuring DNPFBPs develop more thorough customer profiles based on reliable information, understanding and documenting how a legal entity customer fits into a broader structural framework and the relationship to the beneficial owner and other relevant parties; • Regarding information and documentation necessary to understand the relationship amongst legal entity customers, intermediaries, and beneficial owners, particularly in the case of foreign parties, consider clarifying what information and documentation is necessary to effectively undertake this task; and • Consider requiring the compliance function within a DNPFBP to take an active role in the customer on boarding and transaction monitoring and review processes, and to require compliance and management approval according to risk.
4.2 Suspicious transaction reporting (R.16)	• Art. 11(6) of the DDA should be further revised to require enhanced CDD not only with respect to persons in but also to persons from high risk countries; • Ensure that DNFBPs understand the obligation to carry out enhanced CDD under Art. 11(6) of the DDA as mandatory;

	• There should be a specific obligation for the compliance officer to be at a management level; • Grant the government or any authority in Liechtenstein the power to issue and enforce a wider range of countermeasures in relation to transactions or business relationships involving high risk countries; • Art. 18, para. 3 of the DDA should be amended to extend the tipping off prohibition to person's directors, officers and employees (permanent or temporary) of a reporting entity as required under c.14.2. Additionally, the prohibition should apply not only to the SAR but also to related information; • Review the level and type of reporting by DNFBP sectors and institutions in order to identify any challenges related to reporting, and, where gaps are identified, take measures necessary to facilitate effective reporting; • Consider means of facilitating and clarifying reporting with respect to suspicious activities or transactions not associated with any criminal activity; • Consider removing the automatic asset freezing mechanism that accompanies reporting; • Consider means of promoting the development of useful internal policies, accompanied by training, in all DNFBPs; • The FIU should not be required to disseminate the SAR itself to the OPP as stated in Art. 5, para. 1, lett. b) of the FIU Act.
4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, and 25)	
4.4 Other designated non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements and Nonprofit Organisations	
5.1 Legal Persons–Access to beneficial ownership and control information (R.33)	• Reconsider the actual system of access to beneficial owner information (which relies on DNFBPs and FMA); in particular amend the law so that it clarifies that supervisory powers are not restricted to the fulfilment of FMA's supervisory function;

	• Subject "deposited" foundations to the same registration requirements as "registered" foundations; • Require nominee shareholders and directors to disclose the identity of their nominator to the company; • Require the custodian of bearer shares, in all instances, to be a licensed professional, resident in Liechtenstein and always subject to the DDA; • Increase amount of sanctions for noncompliance with registration/notification requirements; • Increase the number of inspections by OJ to check compliance of registration/notification requirements.
5.2 Legal Arrangements– Access to beneficial ownership and control information (R.34)	• The FMA and Public Registry should introduce a policy designed to ensure that any private trustee seeking to register a trust would be notified to the FMA, so that they can confirm that the person is not acting as a professional; • Consider amending the definition of a beneficial owner in the context of a trust, so as to include the settler and any beneficiary who receives a payment (even if that due diligence cannot be undertaken until a payment is about to be made); • Amend the law so that it clarifies that supervisory powers can be used to obtain information for the purposes of enforcing the law and for disclosure to other authorities, both domestic and foreign; • Clarify that the reform of bearer shares extends to Art. 928 bearer certificates in all instances; • Introduce a full prudential regulatory regime for trust companies that would impose a fit and proper test on all executives and owners of trust companies (as is currently the authorities' intention).
5.3 Nonprofit organisations (SR.VIII)	• The authorities should conduct a 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; • The authorities should conduct periodic re-assessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities;

	• More outreach programs to the NPO sector should be considered with a view to protecting the sector from terrorist financing; • Associations with a common-benefit purpose that account for (i) a significant portion of the financial resources under control of the sector and (ii) a substantial share of the sector's international activities should be subject to FSA supervision; • Supervision of foundations by the FSA should also focus on FT issues; • Measures should be in place to sanction violations of oversight measures or rules by NPOs or persons acting on their behalf.
6. National and International Cooperation	
6.1 National cooperation and coordination (R.31)	• Clarify the legal framework concerning financial secrecy provisions, as noted under Recommendation 4; • Cooperation between the FMA and the FIU should be enhanced, particularly the exchange of information that can be used for the FMA to develop a fully fledged risk based approach, and for the FIU to have a better understanding of the level of compliance with AML requirements by the entities subject to supervision from the FMA.
6.2 The Conventions and UN Special Resolutions (R.35 and SR.I)	• The deficiencies noted on the implementation of the recommendations concerning, seizure and confiscation measures, CDD, and the freezing regime of terrorist assets need to be addressed (see respective sections of the MER).
6.3 Mutual Legal Assistance (R.36, 37, 38, and SR.V)	• The incomplete coverage of Art. 98a CPC needs to be addressed to include all persons and entities subject to the DDA, more in particular lawyers, auditors and trustees; • The authorities should consider criminalising serious tax offenses, include them as predicate offense to ML and extend the MLA to all these serious tax crimes by transposing the present relevant international standards shortly; • The authorities should consider measures to mitigate the risk of hampering ongoing investigations in requesting countries that might stem by informing the parties affected by requests of MLA.
6.4 Extradition (R. 39, 37, and SR.V)	• Adopt legislation introducing serious tax crimes as extradition ground; • At a minimum expand the possibility to extradite for serious VAT fraud beyond the Schengen jurisdictions.

6.5 Other Forms of Cooperation (R. 40 and SR.V)	• Harmonise the provisions regulating exchange of information by the FMA with foreign authorities to clarify confidentiality obligations applicable to the FMA and to specify any other conditions that need to be met for the exchange of information with foreign authorities. Remove 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. • The reference in Art. 4, para.3 of the FIU Act which restricts the power of the FIU to obtain only information which is not subject to legal provisions relating to the protection of secrecy should be removed. The authorities should also consider introducing a provision in the law which states that any information that is provided by reporting entities to the FIU for any purpose shall not be subject to any legal provisions on secrecy; • Consider introducing an express provision in the FIU Act empowering the FIU to obtain additional information from reporting entities following a request for information from a foreign FIU, irrespective of whether a SAR has been submitted. The provision should indicate that information requested is to be provided without delay; • The conflicting provisions regarding the FMA's ability to exchange information with the FIU should be removed to ensure that the FIU has proper access to such information in the context of international cooperation; • Art. 7, para. 2, lett. b) of the FIU Act should be amended to clarify the extent of the application of the condition relating to secrecy and fiscal matters; • The FIU should consider introducing a provision in the FIU Act to permit the exchange of information with noncounterparts.
7. Other Issues	
7.1 Resources and statistics (R. 30 and 32)	• FMA should review the level of staffing according to the recommendations of this report. Staff should be allocated taking account of the AML/CFT risk of different sectors; • FMA should adopt a policy with regard to training on AML/CFT and monitor its implementation.
7.2 Other relevant AML/CFT measures or issues	

7.3 General framework—structural issues	

Annex 2. Details of All Bodies Met During the On-Site Visit

List of ministries, other government authorities or bodies, private sector representatives and others.

Public Authorities

H.S.H. Hereditary Prince Alois

Prime Minister

Minister of Finance

Minister of Justice, Economy and Interior

Minister of Foreign Affairs, Education and Cultural Affairs

Office for International Financial Affairs

National AML/CFT Working Group "PROTEGE"

Financial Intelligence Unit (FIU)

Financial Market Authority (FMA)

Office of Justice, Court and Office of the Public Prosecutor

National Police

Office of the Public Prosecutor

Judges

Office of Justice

Private Sector

Bank Alpinum

Raiffeisen Bank

PWC Switzerland

AAC Revision- und Treuhand AG

Müller & Partner Law Firm

Nicolas Reithner (Individual lawyer)

Jeeves Group

Kaiser Partner Trust Services Anstalt

LGT Bank

Centrum Bank and Marxer Partner Lawyers

Verwaltungs- und Privatbank

Valartis Bank

Valartis Fund Management

CAIAC Fund Management AG

Kranz Treuhand

Bankers Association

Investment Undertakings Association

Lawyers and Trustees Associations

First Advisory Trust reg.

Baloise Life Insurance

Walch und Schurti Rechtsanwälte (Law firm)

WalPart Trust reg.

Liechtensteinische Post AG

RE/MAX (Real Estate)

Principal Vermögensverwaltung AG

Thalmann & Verling Trust reg. Vermögensverwaltung

Auditors Association

Asset Management Association

Insurance and Insurance Brokers' Association

Allgemeines Treuunternehmen

Liechtenstein Life Assurance AG

Annex 3. List of All Laws, Regulations, and Other Material Received

[In a separate document. Available upon request at publications@imf.org]

Copies of Key Laws, Regulations, and Other Measures

[In a separate document. Available upon request at publications@imf.org.]