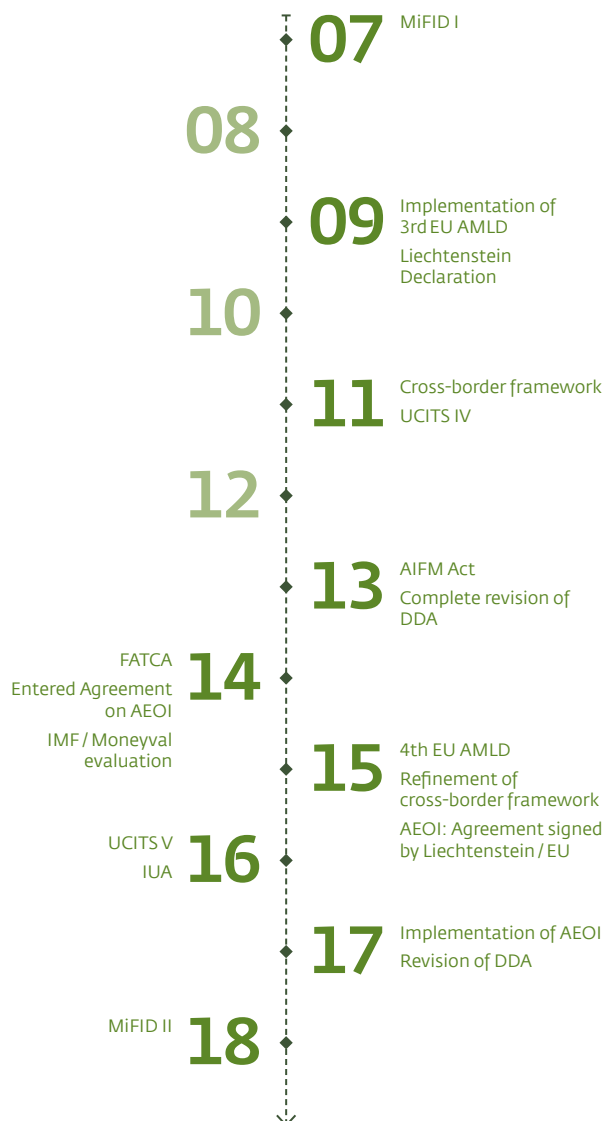


# Regulatory framework and developments

**L**iechtenstein stands for access to markets and for legal certainty. With the implementation of the Automatic Exchange of Information (AEOI), it is one of the so-called Early Adopters of a comprehensive cooperation in international tax matters.

## Implementation of regulatory frameworks 2007 – 2018



## International tax topics

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

### Automatic Exchange of Information (AEOI)

Liechtenstein was among the so-called Early Adopter Countries that entered the Agreement on the Automatic Exchange of Information (AEOI) on 29 October 2014. To date, 101 countries and financial centres have signed up to the AEOI. On 22 August 2016, Liechtenstein took another important step towards the implementation of its financial centre and tax strategy. The Government deposited its instrument of ratification for the Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters (MAC) at OECD in Paris.

### Exchange of data in 2017 and 2018

The first exchange of bank data with EU countries (excluding Austria) will occur in 2017 for the 2016 fiscal year. On 1 December 2016, a Mutual Assistance Convention, which is a comprehensive multilateral instrument for tax matters, came into force. On the basis of this agreement, the Automatic Exchange of Information (AEOI) will be implemented with 32 other states from 2018.

### AEOI Liechtenstein / Switzerland

Switzerland and the EU ratified the AEOI agreement on 26 September 2016. Swiss banks will collect data from 2017, which will be exchanged with the EU member states and ten other states as of 2018.

On 1 February 2017, the Swiss Federal Council decided to implement the Automatic Exchange of Information (AEOI) in tax matters with other partner countries. Liechtenstein is one of these planned partner countries.

In the coming months, Liechtenstein will determine its next AEOI partner states. To date, the Landtag (Parliament) has approved the adoption of the AEOI with 60 jurisdictions in all. The first automatic exchange of data with the EU states (excluding Austria) will occur in 2017. The AEOI shall come into force for the other countries on 1 January 2018, with the first exchange of data occurring in 2019. The implementation of the AEOI with Switzerland, as well as the activation of the AEOI with other partner states, are subject to the approval of the Landtag (Parliament).

#### **BEPS Project**

Liechtenstein is implementing the new international standards arising from the BEPS Project and has amended the tax law accordingly. BEPS stands for "Base Erosion and Profit Shifting". In an effort to take action against tax avoidance in multinational enterprises, the OECD and the Group of Twenty (G20) countries have drawn up 15 recommendations.

The goal of the BEPS Project is to support countries in protecting their tax base and at the same time to ensure that legal certainty for taxpayers is guaranteed by internationally recognised rules. Liechtenstein emphasises here the importance of ensuring a level playing field among countries.

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

Bilateral, long-term cooperation agreements form the basis of Liechtenstein's financial policy. By the end of 2016, tax information exchange agreements (TIEAs) were concluded with 27 countries, and double taxation agreements (DTAs) for cross-border administrative assistance in accordance with OECD regulations were concluded with 17 countries.

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

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

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

##### **• Liechtenstein / Austria**

Due to the derogation granted to Austria applicable within the EU, the AEOI agreement will not be applied until 1 January 2017. Austria will exchange information on new clients from September 2017. Data collection started in October 2016 and an extended exchange to include existing clients will take place in September 2018.

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

#### **FATCA**

On 16 May 2014, Liechtenstein and the USA concluded an agreement (Intergovernmental Agreement according to model 1) on the implementation of the Foreign Account Tax Compliance Act (FATCA). This US Act obliges financial institutions worldwide to identify their US clients and to disclose their assets and revenues to the Internal Revenue Service (IRS) of the United States. The information goes beyond the applicable provisions of the Qualified Intermediary (QI) regime. The Liechtenstein FATCA Law ensures that Liechtenstein's financial institutions can continue to operate in the US capital market.

#### **Cross-border banking**

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The international orientation of the Liechtenstein financial centre entails a complexity of cross-border banking regulations. Institutes providing cross-border financial services that are supervised by the Liechtenstein Financial Market Authority (FMA) are obliged to meet the FMA's requirements and to act in accordance with the regulatory provisions of the country in which the client is domiciled. In August 2015, the FMA formulated a uniform approach to dealing with cross-border risks, with the aim of reducing legal and reputational risks.

In 2016, the LLB Group further refined its cross-border framework, which had been completely revised in 2015, to mitigate the legal risks arising from cross-border activity. During the reporting year, Group Legal & Compliance conducted numerous training courses for client advisers in the particular markets relevant to them. The LLB Group's internal rulings ensure that employees comply with the regulations of the respective target country when engaging in cross-border activities.

Since 2015, the LLB Group has directed the focus of its international activities more towards strategically and economically important countries. It is concentrating its efforts in the home markets of Liechtenstein, Switzerland and Austria, in Germany and selected markets in Western Europe, as well as in the growth markets of Central Europe,

Eastern Europe and the Middle East. We are simplifying our client service in international business by focusing on certain strategically and economically important countries.

## Regulatory environment

### Protection against money laundering

The fight against money laundering and terrorist financing has been a top priority for Liechtenstein for years, which has a zero-tolerance policy towards such matters. As a member of the EEA, Liechtenstein has fully implemented the EU's third Anti-Money Laundering Directive (2005/60/EC) as well as the Commission Directive (2006/70/EC) concerning both the definition of the term "politically exposed person" and the determination of the technical criteria for simplified due diligence obligations.

The European Parliament adopted the fourth EU Anti-Money Laundering Directive on 20 June 2015, it came into force on 25 June 2015 and also applies to Liechtenstein as an EEA member. Liechtenstein is currently in the process of transposing the new directive into national law. The revised Due Diligence Act (DDA) ("Sorgfaltspflichtgesetz (SPG)") is expected to enter into force on 1 September 2017.

Liechtenstein's Criminal Law on Corruption was revised in March 2016 and is the basis for the ratification of the Council of Europe's Criminal Law Convention on Corruption. With the revision, Liechtenstein makes bribery in the private sector a predicate offence for money laundering and implements the international standards of the Council of Europe and the United Nations Organisation (UNO) on the fight against corruption.

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

LLB has assigned the highest priority to combating money laundering and its predicate offences as well as financing of terrorist or criminal activities. Monitoring is performed by an IT system. In addition to the systematic monitoring of transactions, employees receive ongoing training on regulatory changes. They are also sensitised to the indications of possible money laundering activities.

### MiFID II/Liechtenstein

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

The Amendment (MiFID II) and the accompanying Regulation (MiFIR) will come into force in the EU on 3 January 2018, one year later than originally planned. They provide for further regulation of the financial markets and investment services. Furthermore, MiFIR regulates trading transparency, an area that was not at the focus of MiFID. Besides the refinement of regulations since MiFID, the aim of MiFID II is to create greater transparency in the markets and to increase investor protection.

High-frequency trade will be made more transparent and subject to stricter supervisory controls, while position limits on commodity trading will be stricter. In future, throughout the EU, the appropriateness and suitability of advice given to individual clients at bank branches must be checked and a more comprehensive recording made of telephone consultations. The appropriateness and suitability checks and the recordings must document why a financial product was recommended and how it matches the client's risk profile.

### FinSA/Switzerland

Switzerland intends to conceptually reshape the guiding principles of its financial centre in order to transpose the MiFID II, in particular, into national law. On 4 November 2015, the Federal Council adopted the dispatch on the Financial Services Act (FinSA) and on the Financial Institutions Act (FinIA). The FinSA governs the prerequisites for providing financial services and offering financial instruments. The FinIA makes provision for an activity-based, differentiated supervisory regime for financial institutions requiring authorisation. The FinSA and the FinIA shall serve to provide modern investor protection and are expected to come into force in 2018.

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

## Access to the EU market

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

### UCITS V

With the transposition of the EU's Directive on Undertakings for Collective Investment in Transferable Securities (UCITS V) into the Act on Certain Undertakings for Collective Investment in Transferable Securities (UCITS Act), traditional funds will be subject to re-regulation. Its implementation essentially imposes extensive obligations on the depositories of UCITS funds as well as increased liability.

### AIFM

Access to the EU market is central to the competitiveness of both the Liechtenstein financial and investment fund centre. Liechtenstein investment companies have been legally entitled to administer and sell UCITS funds across national borders for several years as a result of the adoption of EU law in the EEA Agreement. Since October 2016, Liechtenstein investment fund providers have also been able to use the EU passport for alternative investment fund managers (AIFMs).

The AIFM Directive serves to increase the transparency of the activities of the alternative investment fund managers and the alternative investment funds (AIFs) they manage vis-à-vis investors and the supervisory authorities. A number of alternative investment fund managers have already been issued with a relevant licence by the Liechtenstein Financial Market Authority (FMA).

### IUA

The latter replaces the IUA from 2005 and applies to four clearly defined domestic investment fund categories. The new investment fund law regulates most notably the fund business model for single investors that was specially set up in Liechtenstein.

## Legal & Compliance interface

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The continually changing regulatory environment, the diversity of regulations and their increasing complexity require constant further development. To this end, LLB has increased its personnel resources and made organisational changes to the Group Legal & Compliance Business Area. Since 1 January 2016, the "Regulatory Tax Matters" area of the Tax department has been integrated into the Group Legal & Compliance Business Area and renamed "Group Tax Compliance".

LLB thus has a traditional legal department, Group Legal, plus three specialised compliance departments:

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

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