Private Banking & Wealth Management

Contributing editors
Shelby R du Pasquier, Stefan Breitenstein and Fedor Poskriakov

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GETTING THE DEAL THROUGH

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Private banking and wealth management

1 What are the main sources of law and regulation relevant for private banking?

The main sources of law and regulation relevant for private banking are statutory legislation passed by parliament, ordinances, which are issued by the government as well as directly applicable European legislation. Furthermore the Financial Market Authority Liechtenstein (FMA) as competent authority may issue instructions relevant for financial intermediaries in Liechtenstein. As the Principality of Liechtenstein is an active member of the European Economic Area (EEA), the main sources of law regarding wealth management are heavily influenced by European law.

Private banking services are first and foremost subject to civil law and the contractual relationship between the intermediary and the client and therefore to the General Civil Code (ABGB) and the Law on Property (SR). Structures and vehicles used for wealth and estate planning purposes are subject to the Liechtenstein Persons and Companies Act of 20 January 1926 (PGR).

Secondly, the contractual relationship is influenced and organised by public law and regulation. In the field of private banking this is particular banking and asset management regulation as well as regulation of trustees and fiduciaries.

Liechtenstein Banks are regulated under the Liechtenstein Banking Act (BankG) and Banking Ordiance (BankV), which is transposing and complementing the European regulatory framework covering banks and investment firms (in particular CRD/CRR framework as well as the European MIFID/MIFIR framework). European Law provides for a number of directly applicable Regulations in this regard, most importantly the so-called Capital Requirements Regulation (Regulation (EU) 575/2013 – CRR).

Other wealth management services, such as individual portfolio management and investment advice with regard to financial instruments, are regulated under the Liechtenstein Asset Management Act (VVG) and Asset Management Ordinance (VVO) as well as the BankG, all of which are transposing in particular the European MIFID framework. European Law provides for a number of directly applicable Regulations in this regard.

Trustees and Trust Companies in Liechtenstein are regulated under the Professional Trustees Act (TrHG), they are also subject to oversight by the Liechtenstein Institute of Professional Trustees and Fiduciaries, which is a public law corporation that safeguards the honour, reputation and the rights of trustees and supervises their duties.

Collective investment schemes (CIS) and insurance contracts may also be used for private wealth management purposes. CIS are regulated under the Liechtenstein AIFM-Act (AIFMG) and UCITS-Act (UCITSG). Both laws transpose European Regulation and are accompanied by a number of directly applicable European regulations. For CIS outside of the AIFM and UCITS framework, in particular for collective investment of families and investment clubs, the Liechtenstein Law of Investment Undertakings (IUG) is applicable. Insurers in Liechtenstein are inter alia subject to the Insurance Supervision Act (VersAG) and Insurance Contract Act.

2 What are the main government, regulatory or self-regulatory bodies relevant for private banking and wealth management?

The main government body relevant for financial regulation in Liechtenstein is the Ministry for General Government Affairs and Finance and in particular the Office for International Financial Affairs (Stabsstelle für internationale Finanzplatzagenden (SIFA)). The main regulatory body in Liechtenstein is the FMA.

The most important industry associations in the field of private banking and wealth management are the Liechtenstein Bankers Association (LBV), the Liechtenstein Institute of Professional Trustees and Fiduciaries (THK), the Liechtenstein Association of Independent Asset Managers (VuVL), the Liechtenstein Investment Fund Association (LAFV), the Liechtenstein Chamber of Lawyers (RAK), the Liechtenstein Insurance Association (LVV) and the Association of Liechtenstein Charitable Foundations (VLGS).

3 How are private wealth services commonly provided in your jurisdiction?

The most important providers of private banking and wealth management services in Liechtenstein are fiduciaries, banks, which traditionally focus on private banking services, and asset managers. However, fund management companies and insurers also offer private wealth management solutions. Liechtenstein law provides for a variety of structuring options for private wealth management purposes, inter alia the foundation and the trust (see question 33 et seq).

4 What is the definition of private banking or similar business in your jurisdiction?

Liechtenstein law does not provide for a definition of 'private banking'. The regulation of banks and other wealth management services in Liechtenstein is harmonised under European law and thus depends on the specific services provided.

5 What are the main licensing requirements?

Banks are subject to prudential regulation. The licencing requires a sound internal organisation and a proper business operation. The intermediary must provide a business plan that outlines the details of the organisation, which is mapped out by the legislator. Organisational requirements are applied in regard of the size of the institution and the nature of its business and the services provided. The minimum initial capital of a bank under Liechtenstein law amounts to at least 10 million Swiss francs. One of the most important licensing requirements is that intermediaries must have their head office situated in Liechtenstein and must be organised in a permitted legal form. Furthermore, there is a requirement to have an investor compensation scheme in place. Key personnel of the intermediary (board of directors and management body as well as the head of the internal audit department) must be fit and proper and thus must be sufficiently qualified with respect to their education and experience in the sector and must be of good repute. There is also an eligibility requirement with regard to shareholders with qualifying holdings. Further licensing requirements are provided by law.

6 What are the main ongoing conditions of a licence?

The preconditions of granting a licence must be fulfilled on an ongoing basis. Changes with regard to certain aspects of the organisation are subject to prior approval by or notification to the FMA. The licensee is subject to ongoing supervision as well as reporting and record-keeping requirements.

7 What are the most common forms of organisation of a private bank?

Under Liechtenstein law banks may be organised as limited company (AG) or as European company (SE). In justified cases the government may allow other legal forms. Foreign banks may establish a subsidiary or branch in Liechtenstein under the applicable legal provisions.

8 How long does it take to obtain a licence for a private bank?

There is no specific licence for a 'private bank', however, with regard to the licence as bank or investment firm the FMA must decide within six months after the receipt of the application, if the dossiers are complete and in any event within 12 months after the receipt of the application. With regard to the licence as asset manager under the VVG, the Liechtenstein FMA must decide within six months after the receipt of the application, if the dossiers are complete.

9 What are the processes and conditions for closure or withdrawal of licences?

The licence expires when the respective business activities have not been taken up within one year of the licence being granted or no business activities have been conducted for a period of at least six months. The licence furthermore expires when bankruptcy proceedings are legally initiated or the legal entity is removed from the commercial register.

The FMA may withdraw a licence if the requirements for authorisation are no longer met, or the licensee fails to meet specific legal requirements, for example with regard to own funds or liquidity. Furthermore the FMA may withdraw a licence, if legal obligations have been seriously violated. The FMA may revoke a licence, when material circumstances were not disclosed or the licence was obtained on the grounds of incorrect information. Lastly, the licence may be renounced.

10 Is wealth management subject to supervision or licensing?

Providers of specific wealth management services, such as individual portfolio management on a discretionary client-by-client basis or investment advice with regard to financial instruments, are subject to supervision and licensing. In the case of asset managers, these business activities are regulated under the VVG and VVO. Investment firms are subject to the BankG. A licence as bank under the BankG also allows the provision of such wealth management services.

11 What are the main licensing requirements for wealth management?

Investment firms and asset managers are subject to prudential regulation. In its basic features, the licensing requirements are quite similar to those of banks; however, as mentioned above, the requirements show consideration for the size of the institution and the services provided. The minimum initial capital of investment firms under the Liechtenstein BankG amounts to at least 1.5 million Swiss francs, while asset managers must have a minimum initial capital of at least 100,000 Swiss francs.

12 What are the main ongoing conditions of a wealth management licence?

The preconditions of granting a licence must be fulfilled on an ongoing basis. Changes with regard to certain aspects of the organisation are subject to prior approval by or notification to the FMA. The licensee is subject to ongoing supervision as well as reporting and record-keeping requirements.

Anti-money laundering and financial crime prevention

13 What are the main anti-money laundering and financial crime prevention requirements for private banking in your jurisdiction?

Liechtenstein has attached great importance to anti-money laundering. As an EEA member, Liechtenstein has implemented the Third EU Money Laundering Directive (2005/60/EC). The implementation of the Fourth EU Money Laundering Directive (2015/849) will take place in due course.

Financial intermediaries are subject to due diligence requirements according to the Due Diligence Act and the accordant Ordinance, implementing the European Directives on money laundering. Such requirements include the identification and verification of the identity of the client, the identification and verification of the identity of the beneficial owner of the assets, the establishment of a business profile as well as a risk-adequate monitoring of the business relationship. The verification of identity of the clients regularly takes place within the scope of personal meetings. In this regard the financial intermediary shall inspect the passport, identity card, driving licence or certified copies thereof, and collect further specific information on the client. Under specific conditions, financial intermediaries may undergo an online verification process instead of verifying the client in a personal meeting (eg, video chat). For the verification process of the identity of the beneficial owner, Liechtenstein law provides blank forms to be completed containing information on the beneficial owner. The business profile shall contain inter alia information on the economic background and origin of the assets deposited.

Increased due diligence requirements may apply in specific cases specified by law.

14 What is the definition of a politically exposed person (PEP) in local law? Are there increased due diligence requirements for establishing a private banking relationship for a PEP?

A PEP is defined as natural persons who are or have, until a year ago, been entrusted with prominent public functions in a foreign country and immediate family members, or persons known to be close associates of such person. Such prominent public functions include heads of state, heads of government, ministers and deputy or assistant ministers and senior officials of political parties; members of parliaments; members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances; members of courts of auditors or of the boards of central banks; ambassadors, chargés d'affaires and high-ranking officers in the armed forces; members of the administrative, management or supervisory bodies of state-owned enterprises.

Increased due diligence measures apply to business relationships and transactions with PEP. Financial intermediaries shall establish additional measures by implementing adequate, risk-based procedures to determine whether the contracting party or the beneficial owner is a PEP or not, obtaining the approval of at least one member of the management before establishing a business relationship with a PEP as contracting party or beneficial owner or – where a contracting party or a beneficial owner is recognised as a PEP in the context of an existing business relationship – before continuing the business relationship. Each year, at least one member of the management shall approve the continuation of the business relationships with a PEP.

The implementation of the Fourth EU Money Laundering Directive may have an effect on the current legal situation regarding PEP.

15 What is the minimum identification documentation required for account opening? Describe the customary level of due diligence and information required to establish a private banking relationship in your jurisdiction.

Financial intermediaries are required to collect certain customer and beneficial owner information before establishing a private banking relationship. The minimum information required for private individuals basically includes the full name, date of birth, residence and citizenship. The information required for legal entities basically includes the name or firm, type of legal entity, registered office, date of establishment, date and place of entry in public register as well as the names of the bodies or trustees formally acting on behalf of the legal entity in dealings with the banks and wealth managers. This information has to

be proved by a valid official identification document with a photograph (in particular a passport, identity card or driving licence). Legal entities need to provide an extract from the commercial register or a similar document. In order to establish a business profile, banks and wealth managers have to obtain information on the economic background and origin of the assets deposited, the profession and business activity of the effective depositor of the assets, the intended use of the assets as well as authorised agents and bodies in contact with banks and wealth managers. In practice, financial intermediaries require more detailed information for account opening on a case-to-case basis.

16 Are tax offences predicate offences for money laundering? What is the definition and scope of the main predicate offences?

Yes, tax offences are predicate offences for money laundering. Basically, all crimes that are committed with intention that are punishable by a term of imprisonment of at least three years as well as specific other crimes are covered from the scope of the predicate offences. In practice, the main predicate offences that may apply in the context of private banking are fraud and breach of trust.

17 What is the minimum compliance verification required from financial intermediaries in connection to tax compliance of their clients?

An internal directive by the Liechtenstein Banking Association relating to due diligence measures with regard to the tax compliance of their clients requires banks to verify the tax compliance of their clients. Also other financial intermediaries undertake different measures to verify the tax compliance of their clients (eg, requesting tax compliance confirmations issued by the clients or their tax advisers).

18 What is the liability for failing to comply with money laundering or financial crime rules?

Financial intermediaries (private bank or wealth management institution and its employees) that fail to comply with due diligence measures under the Due Diligence Act either face criminal prosecution (prison sentence up to six months or fine of not more than 360 times the daily fine rate set by the court) or administrative procedures (fine up to 100,000 Swiss Francs), depending on the type of failure.

Clients and financial intermediaries committing financial crimes under the Criminal Act can face criminal prosecution (prison sentence and/or fine). Civil liability may also arise from the failure to comply with money laundering or financial crime-rules.

Client segmentation and protection

19 Does your jurisdiction's legal and regulatory framework distinguish between types of client for private banking purposes?

Liechtenstein law distinguishes between types of clients in banking and investment law in line with European law. According to Annex 1 BankG and Annex II MifiD II respectively, a distinction is made between eligible counterparties, professional clients and non-professional clients. HNWIs as well as vehicles that are in place to structure the wealth of HNWIs may be professional clients or non-professional clients.

The legally provided classification may be altered, if the client wishes to waive the benefit of more protective regulation and there is reasonable assurance that the client is capable of understanding the risks involved. This may, however, only be assumed, if the client passes at least two of the three following tests: (i) the client has over the previous four quarters carried out an average of 10 transactions of significant size on the relevant market; (ii) the client has a financial instrument portfolio, including cash deposits and financial instruments, exceeding €500,000; and (iii) the client has substantial professional experience, namely, works or has worked for at least one year in a professional position in the financial sector, which requires knowledge of the envisaged transactions or services.

Furthermore, Liechtenstein law also in the field of collective investment, specifically in the AIFMG and IUG, distinguishes between types of clients, in particular between professional Investors, private investors and qualified investors.

20 What are the consequences of client segmentation?

The primary consequence of the client segmentation is the applicable level of investor protection. In particular the duties with regard to information and counselling are lighter when dealing with professional clients. Those duties, however, also depend on the specific services provided. In the law of collective investment specific products are only available for qualified investors. In particular CIS subject to the IUG, which may be used for wealth management purposes and offer a somewhat lighter regulatory environment, are only available for qualified investors.

21 Is there consumer protection or similar legislation in your jurisdiction relevant to private banking?

General consumer protection legislation, such as the Liechtenstein KSchG, may be applicable to financial services. With regard to the distance marketing of financial services to consumers, the law regarding distance marketing of consumer financial services (FernFinG) specifically applies.

Exchange controls and withdrawals

22 Describe any exchange controls or restrictions on the movement of funds.

Not applicable.

23 Are there restrictions on cash withdrawals imposed by law or regulation? Do banks customarily impose restrictions on account withdrawals?

Under specific circumstances, the FMA may impose such restrictions. Banks may impose such restrictions or demand an advance notice if larger amounts are withdrawn. In particular, banks may refuse incoming and outgoing cash payments of a higher amount (eg, 10,000 Swiss francs) in specific cases.

24 Are there any restrictions on other withdrawals from an account in your jurisdiction?

See above.

Cross-border services

25 What is the general framework dealing with cross-border private banking services into your jurisdiction?

Banks and wealth management institutions from the EEA have access to the market in Liechtenstein based on the freedom to provide cross-border banking services upon receipt of a notification by the local regulator (passporting).

Banks and wealth management institutions from third countries (outside the EEA) providing private banking services into Liechtenstein on a cross-border basis have to establish a Liechtenstein branch in order to actively approach clients in Liechtenstein. Without establishing a local branch, banks and wealth management institutions outside the EEA may only provide private banking services to clients in Liechtenstein on a reverse solicitation basis. However, the applicability of reverse solicitation is limited.

26 Are there any licensing requirements for cross-border private banking services into your jurisdiction?

Yes. Banks and wealth management institutions outside the EEA providing banking services (eg, accepting deposits, lending, opening bank accounts) to clients in Liechtenstein on a cross-border basis require a banking licence. The only exception is reverse solicitation.

27 What forms of cross-border services are regulated and how?

The provision of all cross-border wealth management, advisory and banking services provided for by law to Liechtenstein clients is regulated.

The regulation of cross-border services is stipulated in question 25.

28 May employees of foreign private banking institutions travel to meet clients and prospective clients in your jurisdiction? Are there any licensing or registration requirements?

If the licensing or notification requirements mentioned in question 25 are complied with, employees of foreign private banking institutions may travel to meet clients and prospective clients in Liechtenstein.

29 May foreign private banking institutions send documents to clients and prospective clients in your jurisdiction? Are there any licensing or registration requirements?

If the licensing or notification requirements mentioned in question 25 are complied with, employees of foreign private banking institutions may send documents to clients and prospective clients in Liechtenstein.

Tax disclosure and reporting

30 What are the main requirements on individual taxpayers in your jurisdiction to disclose or establish tax-compliant status of private banking accounts to the authorities in your jurisdiction? Does the requirement differ for domestic and foreign private banking accounts?

If the private banking account is subject to taxation in Liechtenstein, individual taxpayers are obliged to disclose domestic and foreign private banking accounts to the Tax Authority.

31 Are there any reporting requirements imposed on the private banks or financial intermediaries in your jurisdiction in respect to their domestic and international clients?

Financial intermediaries are not subject to tax reporting requirements to the Tax Authority in respect to their domestic and international clients. However, financial intermediaries may be obliged to report on the grounds of anti-money laundering suspicion.

32 Is client consent required to permit reporting by the private bank or financial intermediary? Can such consent be revoked? What is the consequence of consent not being given or being revoked?

Not applicable.

Structures

33 What is the most common legal structure for holding private assets in your jurisdiction? Describe the benefits, risks and costs of the most common structures.

Liechtenstein has strong international connections both from a business perspective and from a legal perspective. The legal system offers a broad range of structuring possibilities that are attractive to clients from different jurisdictions. Besides corporate vehicles for wealth management purposes, commonly known in central European jurisdictions, Liechtenstein law offers several vehicles, which are tailored with regard to wealth management purposes. Liechtenstein thus has a very expedient and viable foundation law as well as its own trust law, which dates back to 1926.

Most commonly used structures for private wealth management purposes in Liechtenstein are the Liechtenstein foundation (Stiftung), the Liechtenstein trust and other corporate vehicles such as the Liechtenstein establishment (Anstalt). Besides that investment funds (private label funds) and insurance products are commonly used for wealth management purposes. The benefits and risks of each structuring option strongly depend on the objectives pursued. The foundation and the trust, however, both offer specific advantages with regard to asset protection purposes, if structured accordingly.

34 What is the customary level of know-your-customer (KYC) and other information required to establish a private banking relationship with a structure?

With regard to anti-money laundering and financial crime prevention see question 15.

Furthermore, Liechtenstein law stipulates KYC rules stemming from European financial regulation for consumer protection purposes. When providing investment advice or portfolio management services, service providers must *inter alia* inquire into the specific objectives, risk appetite and experience of the client.

35 What is the definition of controlling person in your jurisdiction?

Within the meaning of the Liechtenstein due diligence law, control, both for corporations and foundations and trusts as well as foundation-like establishments is defined as the power to dispose of the assets of the legal entity, to amend the provisions governing its essential nature or to amend the beneficiaries. Control is also given if a person is able to influence the exercise of those aforementioned control powers.

36 Are there any regulatory or tax obstacles to the use of structures to hold private assets?

Any structuring under Liechtenstein law must observe the requirements and formalities the legislator imposes with regard to their establishment and maintenance in order to avoid personal liabilities or nullity. Any contract that violates a legal prohibition or that is contrary to accepted principles of morality is void. Other limits and obstacles as well as structuring possibilities depend on the specific situation as well as on the objective of the structure, for example, if a structure makes use of the Status of a Private Asset Structure (PVS) it may not carry out commercial activities. In general, it is advisable to consult a tax adviser to analyse the specific situation.

Contract provisions

37 Describe the various types of private banking contract and their main features.

According to the principle of freedom of contract, Liechtenstein law does not provide for a concluding list of private banking contracts. In practice, there are various types of private banking contracts, such as asset management agreements and investment advisory agreements. Banks and wealth management institutions use general terms and conditions applicable to the private banking contracts with clients.

Private banking contracts often contain a choice of law clause. Liechtenstein law only provides for limited restrictions on the validity of the choice of law clause, but especially for consumer protection reasons.

38 What is the liability standard provided for by law? Can it be varied by contract and what is the customary negotiated liability standard in your jurisdiction?

Liability for a breach of private banking contract under Liechtenstein law is provided by civil law. Clients may claim from banks or wealth management institutions compensation for damages caused by wilful or negligent breach of private banking contracts. The extent of the claim for damages depends on the fault (wilful or negligent). In case of claiming damages by breach of contract, banks and wealth management institutions are required to prove that there is neither wilful nor negligent causation of damages. The liability of banks or wealth management institutions against consumers may only be excluded in case of slight negligence behaviour. But also in other cases, the exclusion of liability for wilful or gross negligence behaviour might not be valid.

39 Are any mandatory provisions imposed by law or regulation in private banking contracts? Are there any mandatory requirements for any disclosure, notice, form or content of any of the private banking contract documentation?

Wealth management institutions are obliged to conclude a written agreement with clients on the rights and obligation and other conditions, especially on the type of investments, extent of authorisation for portfolio management and remuneration of wealth management institution (Art. 18 Asset Management Act).

Disclosure obligations may arise with respect to specific wealth management services, such as the provision of investment advice, for client protection reasons.

40 What is the applicable limitation period for claims under a private banking contract? Can the limitation period be varied contractually? How can the limitation period be tolled or waived?

The limitation period for claims for damages under a private banking contract is three years from the date of knowledge of the damage and the party causing the damage. The limitation period will be extended to 30 years in case of specific criminal behaviour.

The waiver of the limitation period is not possible in advance, only under specific conditions upon the occurrence of damages.

Confidentiality

41 Describe the private banking confidentiality obligations.

Liechtenstein Banks and other financial intermediaries are subject to the Liechtenstein data protection legislation. Furthermore, there is a specifically stipulated banking secrecy that prevents the passing on of information that was obtained due to a banking relationship and a specific protection of trustee secrecy. Duties of confidentiality may also stem from the contract between service provider and client.

42 What information and documents are within the scope of confidentiality?

All information banks and their employees are entrusted with or otherwise obtain due to the business relationship with a client are subject to the specifically stipulated banking secrecy provisions.

43 What are the exceptions and limitations to the duty of confidentiality?

The fulfilment of a legal obligation to provide information to third parties, eg, to give testimony or information to criminal courts and supervisory bodies as well as provisions regarding cooperation with other supervisory bodies, is not deemed to be a violation of the banking secrecy. There is, however, no time limit with regard to the banking secrecy.

44 What is the liability for breach of confidentiality?

The violation of secrecy obligations pursuant to the BankG is punishable by a term of imprisonment up to three years. If damages are caused by the breach of confidentiality, there may also be civil liability incurred.

Disputes

45 What are the local competent authorities for dispute resolution in the private banking industry?

Clients and financial intermediaries may contact the conciliation board in order to resolve disputes without the involvement of the court. The conciliation board promotes discussions between the involved parties, and submits a negotiated solution to the parties. The parties are not bound by the solutions proposed by the conciliation board. Thus, they are free to accept the proposed solution or initiate court proceedings.

Court proceedings between clients and financial intermediaries take place at the civil court. The ordinary civil procedure rules apply for these proceedings.

46 Are private banking disputes subject to disclosure to the local regulator? Can a client lodge a complaint with the local regulator? How are complaints investigated?

A client can lodge a complaint with the local regulator in case of breach of supervisory legislation by the financial intermediary. The failure to comply with supervisory law may be punishable under criminal, administrative and civil law. However, disputes between clients and financial intermediaries under civil law are not subject to automatic disclosure to the local regulator.

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