



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Liechtenstein: Banking & Finance (2nd edition)

This country-specific Q&A provides an overview to banking and finance laws and regulations that may occur in Liechtenstein.

This Q&A is part of the global guide to Banking & Finance. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/banking-finance-2nd-edition/>



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The Legal 500



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1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

The main governmental authority 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 local competent supervisory authority is the Financial Market Authority Liechtenstein (FMA). The legal mandate of the authority is to safeguard the stability and functioning of the Liechtenstein financial market, the protection of clients, the prevention of market abuse, and the implementation of and compliance with recognized international standards.

2. **Which type of activities trigger the requirement of a banking license?**

As the Principality of Liechtenstein is an active member of the European Economic Area (EEA), European law heavily influences financial regulation in Liechtenstein. Liechtenstein Banks are primarily regulated under the Liechtenstein Banking Act (BA) and Banking Ordinance (BO). The BA and BO transpose and complement the partly directly applicable European regulatory framework covering banks and investment firms (in particular the CRD/CRR framework as well as the European MIFID II/MIFIR framework). Although the CRD framework is pending to be transposed into the EEA agreement, Liechtenstein has implemented and fully complies with the CRD framework. The CRR Regulation (EU) No 575/2013 is applied accordingly.

The BA stipulates licensing requirements for banks and investment firms and thus does not only cover banking activities, but also the provision of investment services and ancillary services under MIFID II. Licensing requirements under the BA are triggered, if the following activities are conducted on a commercial basis:

- (i) acceptance of deposits and other repayable funds;
- (ii) lending of third-party funds to an indeterminate group of borrowers;
- (iii) custody business;
- (iv) provision of investment services and ancillary services as well as the execution of other off-balance-sheet banking transactions;

(v) the issuance of electronic money;

(vi) the assumption of guarantees, warranties and other liabilities for others, insofar as the assumed obligation is to make cash payments;

(vii) trading in foreign currencies for own account or for the account of third parties.

3. **Does your regulatory regime know different licenses for different banking services?**

The BA distinguishes between banks and investment firms. Different licenses are available for investment firms, depending on the specific services provided. Lower regulatory requirements and approval standards may apply, if an investment firm provides only a limited spectrum of services (e.g. do not deal on own account with financial instruments or underwrite issues of financial instruments on a firm commitment basis).

4. **Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?**

A license under the BA is always issued based on a specific business model and scope of services and does not automatically cover the provision of all services and activities. Generally, however, a banking license may cover the provision of investment services and the issuance of e-money. Banks do not require a separate license under the payment services act.

5. **Is there a “sandbox” or “license light” for specific activities?**

There is no specific sandbox model or light license comparable to other jurisdictions.

However, the FMA has established a FinTech competence team (fintech[at]fma-li.li) and is known to support and accompany FinTechs during the licensing process as well for its constructive exchange with innovative financial service providers.

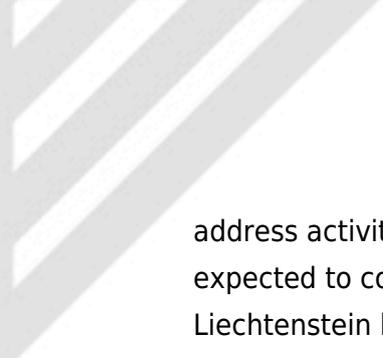
6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

Liechtenstein is known to be a crypto and FinTech friendly jurisdiction. The financial center welcomes and encourages the research and development of crypto-based business models and financial solutions.

Dealings in crypto-currencies may be subject to licensing requirements, if they fall within the scope of financial markets regulation, e.g. if the respective currency qualifies as financial instrument or security under Liechtenstein law. Virtual currencies do not constitute an official currency, but, depending on the specific design of the token or coin, may qualify as security, financial instrument or other form of asset as the case may be.

The issuing and sale of token that do not qualify as financial instrument or security under Liechtenstein law, are allowed in Liechtenstein. Sales of token, however, which qualify as security under Liechtenstein law, require compliance with the respective legal framework for a public offering of securities. Other potentially applicable rules or regulations depend on the individual circumstances, business activity and instruments involved.

To date Liechtenstein has not implemented specific regulation on crypto-related business other than anti money laundering provisions. However, currently a draft bill “Act on Transaction Systems Based on Trustworthy Technologies” (TTA) is going through the legislative process Liechtenstein. The bill does not only address the issuance or custody of crypto currencies, but also deals with tokenization of assets and generally seeks to provide for a functioning legal environment for businesses, transactions and investments related to crypto currencies. The bill, however, will not



address activities subject to traditional banking and financial regulation. The act is expected to come into force in 2019. As Liechtenstein is part of the EEA, the Liechtenstein legal environment will be influenced by legal developments on a European level.

7. What is the general application process for bank licenses and what is the average timing?

Banking licenses are issued by the FMA. The FMA offers a voluntary preliminary application process in which it checks the application for “red flags”. The preliminary application process does not require the original documents later needed for the definitive application.

Upon receipt of the definitive application, the FMA issues an acknowledgement of receipt. The duration of the approval procedure depends primarily on the conclusiveness and completeness of the information and documents specified in the application. Any rejection must be notified to the applicant within six months of receipt of the application or, if the application is incomplete, within six months of submission of the required information. In any event, a decision shall be taken within twelve months of receipt of the application.

The licensing procedure triggers supervisory fees in the amount of CHF 100.000 for banks and CHF 30.000 for investment firms.

8. Is mere cross-border activity permissible? If yes, what are the requirements?

An activity in Liechtenstein on a cross border basis by an EEA bank/investment firm is possible and requires a notification with the home country authority (“passporting”). The Liechtenstein Banking Act, however, does not provide for cross-border licenses for third country (non-EEA) banks/investment firms and in lack of an MIFID II equivalency decision by the European Commission a general MIFID II third country passport for such

entities is currently not available. Third country intermediaries must therefore establish a branch in Liechtenstein and obtain a respective license. Branches of a non-EEA bank operating under a branch license within the EEA may not provide services on a cross border basis.

9. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

Under Liechtenstein law banks may be organised as a stock company (AG) or as a European company (Societas Europea - SE). Under certain circumstances, the FMA can approve of other legal forms. The commonly used legal form is the stock company.

10. What are the organizational requirements for banks, including with respect to corporate governance?

As banks are subject to regulation and prudential supervision, the organizational requirements for banks are heavily influenced by European law and supervisory guidance. A business plan must outline the details of the organisation. Generally, the bank must have a sound internal organisation and a proper business operation, whereas organisational requirements are applied with regard to the size of the institution and the nature of its business and the services provided.

The bank must have its head office in Liechtenstein and must be organised in a permitted legal form, thus as a stock company (AG) or European company (Societas Europea - SE). The minimum initial capital of a bank under Liechtenstein law amounts to at least 10 million Swiss francs. Furthermore, there is a requirement to have an investor compensation scheme in place as well as appropriate procedures for employees to report violations of the Banking Act and the CRR.

The board of directors must consist of at least 3 members; there must be two managing directors who exercise joint responsibility for their activities and who may not simultaneously be members of the Board of Directors. Key personnel 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. The law further requires for example an internal audit department, a compliance function and a risk management system independent of operational business. Shareholders with qualifying holdings are subject to an eligibility requirement.

Further details regarding the banks organization are provided by law and regulatory guidelines. As mentioned above, lower regulatory requirements and approval standards may apply, if not a full banking license, but an investment firm license with only a limited spectrum of services is obtained.

11. Do any restrictions on remuneration policies apply?

The CRD IV/CRR provisions on remuneration apply, which cover the remuneration of certain employee categories and high-income personnel, fixed and variable remuneration as well as organizational aspects.

12. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

As Liechtenstein is part of the EEA, EU legislation, which is transposed into the EEA Agreement is either directly applicable or is transposed into Liechtenstein law. Further, the Liechtenstein FMA regularly follows guidance by European regulators (such as the European securities and markets authority ESMA or the European banking authority EBA).

Although the CRD framework is pending to be transposed into the EEA agreement, Liechtenstein has implemented and fully complies with the CRD IV/CRR framework, which reflects the Basel II standards. The CRD has been transposed into national law and the CRR (EU) No 575/2013 as well as the associated implementing and delegated acts are legally binding and applied accordingly.

13. **Are there any requirements with respect to the leverage ratio?**

See our answer above under section 12.

14. **What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?**

See our answer above under section 12.

15. **Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?**

Yes, banks have to draw up and publish an annual report, annual disclosure report and, if applicable a consolidated annual report and a cash flow statement. Banks and investment firms with a balance sheet total of at least CHF 100 mio must also prepare interim financial statements every six months.

16. **Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?**

Yes. The provisions of the CRD/CRR and MIFID II framework apply as well as the provisions on financial conglomerates.

17. **What reporting and/or approval requirements apply to the**

acquisition of shareholdings in, or control of, banks?

The BA stipulates specific approval requirements. The Liechtenstein FMA applies them in line with the Joint Guidelines on the prudential assessment of the acquisition and increase of qualifying holdings in the financial sector (JC/GL/2016/01) of 20 December 2016, issued jointly by EBA, EIOPA and ESMA.

Persons interested in the direct or indirect acquisition of a qualifying holding in a bank or investment firm must notify this intent to the FMA in writing. Further, any intended direct or indirect increase of a qualifying holding must be notified if, as a result of the increase, the thresholds of 20%, 30% or 50% in the capital or voting rights of the bank or investment firm are reached or exceeded, or if the bank or investment firm would become a subsidiary of an acquirer.

The FMA examines the suitability of the proposed acquirer and the soundness of the intended acquisition or increase and may object, if the influence of the acquirer could impair the prudent and sound management of the target. If a participation is acquired or increased despite an objection by the FMA, the voting rights of the acquirer may not be exercised until the objection has been amended or revoked by appeal or the objection has been withdrawn by the FMA. A cast vote in spite of an objection is null and void.

18. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

Yes. In the process described above, the suitability of the proposed acquirer is assessed. This includes inter alia the following aspects

- shareholder structure and beneficial owners
- good repute and experience of any person who, as a result of the acquisition or increase, will di-rect the bank or investment firm;
- the financial soundness of the proposed acquirer;
- potential risks with regard to compliance with regulatory requirements and effectiveness of su-pervision and exchange of information with competent authorities,

- potential risks with regard to money laundering or terrorist financing.

19. **Are there specific restrictions on foreign shareholdings in banks?**

See our answers 17 and 18. No additional specific restrictions apply.

20. **Is there a special regime for domestic and/or globally systemically important banks?**

Liechtenstein has transposed the CRD/CRR framework (e.g. systemic risk buffer), but has not implemented further specific provisions in this regard.

21. **What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?**

The FMA is authorized to issue injunctions and impose sanctions. These include a withdrawal of the license and dissolution of a bank or investment firm. Further sanctions, such as penal provisions depend on the type of violation. For example, anyone who performs banking activities without a license, operates a representative office without a license or operates a branch without a license may be punished with imprisonment of up to three years or with a monetary penalty of up to 360 daily rates. Further, any-one who engages in activities by virtue of the free movement of services (within the EEA) before the respective preconditions have been met shall be punished with imprisonment of up to six months or with a monetary penalty of up to 180 daily rates. The amount of the daily rates depends to the economic capacity of the party concerned.

22. **What is the resolution regime for banks?**

Liechtenstein has transposed the Bank Recovery and Resolution Directive 2014/59/EU (BRRD) into national law.

23. **How are client's assets and cash deposits protected?**

Banks and investment firms are obliged to join a self-regulation body or participate in a foreign protection scheme for the purpose of deposit protection. The self-regulation body is subject to approval by the FMA. The majority of regulated intermediaries in Liechtenstein has joined the Deposit Guarantee and Investor Compensation Foundation SV (Einlagensicherungs- und Anlegerentschädigungstiftung, EAS)

24. **Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?**

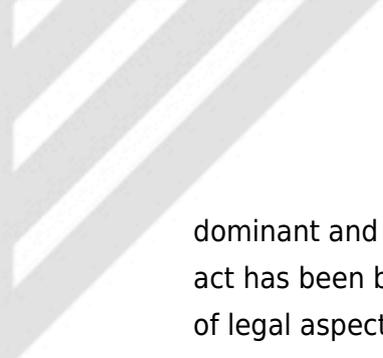
Yes. Liechtenstein has transposed the BRRD into national law, which inter alia encompasses a bail-in tool as possible resolution mechanism.

25. **Is there a requirement for banks to hold gone concern capital ("TLAC")?**

Liechtenstein has transposed the CRD IV/CRR framework as well as the BRRD, which reflect the TLAC standard, into national law.

26. **In your view, what are the recent trends in bank regulation in your jurisdiction?**

Over the last years FinTech and blockchain related regulatory efforts have been



dominant and remain a topical matter. On a legislative level the so-called blockchain act has been brought under way, which is a major legislative project covering all kinds of legal aspects of blockchain related business models. This trend continues on the supervisory level, where the FMA has installed a specialized practice group for FinTech-related financial services (www.fma-li.li/en/regulation/fintech-in-liechtenstein.html).

Other trends are widely influenced by European financial markets regulation and supervisory activity.

27. **What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?**

In spite of being challenged by the rapid regulatory development in recent years and its small size, Liechtenstein has maintained a high-level of quality and flexibility when it comes to financial services and supervision. Qualified workforce is in high demand and in this regard Liechtenstein is competing with financial centers all over the world. The ability to attract qualified workforce will be an important factor to remain competitive.