

Liechtenstein

Chamber of commerce:

Liechtensteinische Industrie und
Handelskammer
Altenbach 8
9490 Vaduz
Liechtenstein
Tel: +423 237 5511
Fax: +423 237 5512
Email: info@lihk.li
Web: www.lcci.li

Professional body:

Liechtensteinische Rechtsanwaltskammer
Kirchstrasse 6
9494 Schaan
Liechtenstein
Tel: +423 232 9932
Fax: +423 232 9933
Email: rechtsanwaltskammer@lirak.li
Web: www.lirak.li

Public offers and prospectus duty

Dr Michael Oberhuber
Marxer & Partner Rechtsanwälte
Vaduz

The EC action plan for financial markets

To harmonise requirements for the drawing up, approval and distribution of prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating in a member state, the European Parliament and the European Commission issued Directive 2003/71/EC. One of the objectives of the Directive was to implement measures to ensure investor protection and market efficiency in accordance with the high regulatory standards adopted in the relevant international zones.

Liechtenstein as a member state of the EEA

Since 1995, the Principality of Liechtenstein has been a member state of the European Economic Area (EEA). European directives have therefore had an effect on its laws. Because of its membership in the EEA, Liechtenstein has a duty to implement several European directives into its national law, such as Directive 2003/71/EC. Liechtenstein implemented Directive 2003/71/EC in its national law in September 2007 by enacting the Securities Prospectus Act (SPA), as well as amending the Financial Market Authority Act and the Investment Undertakings Act (IUA). The issuance, trading and offering of securities in Liechtenstein is mainly regulated by the IUA, the Banking Act, the SPA and the general provisions of the Domestic Securities Law.

Investment Undertakings Act

Foreign investment undertakings and foreign banks have become especially active in Liechtenstein since it became a member state of the EEA.

Investment undertakings such as mutual or investment funds and management companies (companies that manage investment undertakings) require, in principle, a licence granted by the Liechtenstein authorities to offer shares in Liechtenstein or to Liechtenstein residents. They are subject to the IUA, which also provides special regulations regarding prospectus duty, applicable to certain investment undertakings only.

In a case where a management company is domiciled in another EEA member state and has received a licence from that member state, such company may provide services in Liechtenstein through a branch or within the European principle of the freedom to perform services in one or more of the European member states without requiring a further licence issued by the Liechtenstein authorities (the so-called European passport).

Banking Act (SPA)

The Banking Act qualifies participation in the issuance of securities and other services combined therewith as services reserved for banks licensed in Liechtenstein. If such services are provided for business purposes, a corporation is, in principle, required to have a licence in Liechtenstein to offer services such as banking.

Securities Prospectus Act (SPA)

The SPA deals with requirements regarding the drawing up, approval and distribution of the prospectus published when securities are offered to the public or admitted to trading.

Even a domestic or foreign issuer not subject to the IUA or the Banking Act is (in principle) subject to the SPA. However, the SPA knows various exceptions regarding its application in connection with public offers. Public offers of securities included in an offer where the total amount is less than €2.5 million, a limit which is calculated over a period of 12 months, or securities unconditionally and irrevocably guaranteed by a

member state or by one of a member state's regional or local authorities are, for example, not subject to the SPA.

The SPA defines a public offer in accordance with other European regulations in that field as a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered to enable the investor to decide to purchase or subscribe to the securities.

Securities are further defined as transferable securities which are negotiable on the capital market including but not limited to shares or other securities, equivalent to equity or shares of legal entities, corporations or other entities, bonds and other securitised debts including certificates for such securities and any other securities giving the right to acquire or dispose of any such securities or giving rise to a cash settlement, being defined as transferable securities, currencies, interest rates or income.

In principle, all public offerings of an offeror/issuer (irrespective of whether the offeror/issuer is domiciled inside or outside the jurisdiction of Liechtenstein) in Liechtenstein or to Liechtenstein residents are subject to prospectus duty, provided that the offering may not be qualified as exempted from such duty.

An offer addressed solely to qualified investors, an offer of securities addressed to fewer than 100 natural or legal persons per member state (other than qualified investors), an offer of securities with a total consideration of less than €100,000, which is calculated over a period of 12 months, an offer of securities whose denomination per unit amounts to at least €50,000 or an offer to investors who acquire securities for a total consideration of at least €50,000 per investor is, in principle, subject to the SPA but not subject to the prospectus duty provided for in the SPA.

Passporting

The SPA also deals with the single-licence principle: a public offer made in Liechtenstein after a prospectus was approved by the Liechtenstein Financial Market Authority, the prospectus and any supplements thereto are also valid for a public offer or admission to trading in any one or more member states of the EEA and therefore also in the EC, subject to a notification proceeding.

As it has an efficient administrative apparatus and prospectuses have been approved in more than agreeable time by the Financial Market Authority, Liechtenstein has become an interesting alternative setting for the filing of a European prospectus in recent years.

Financial and corporate

Recommended firms	
Tier 1	Dr Dr Batliner & Dr Gasser Marxer & Partner Walch & Schurti
Tier 2	Batliner & Konrad Batliner Wanger Batliner Harry Gstöhl & Partner Law firm Holz hacker Müller & Partner Sele Frommelt & Partner Wanger
Tier 3	Law Office Struth Seeger Frick & Partner

Liechtenstein hit the headlines this year in a row with Germany over banking secrecy. Germany's foreign-intelligence agency paid €4 million to an individual for allegedly stolen data about customers of LGT, Liechtenstein's biggest bank. The agency passed the data on to German prosecutors who launched a high-profile investigation into alleged tax fraud.

The affair was particularly embarrassing for Liechtenstein as LGT's chief executive is Prince Max, the younger brother of the acting head of state. One partner says: "Who can I trust if I cannot trust the Prince's bank?"

Worse may follow if Germany and the EU strong-arm Liechtenstein into repealing privacy laws. "In Liechtenstein privacy means that your neighbour should not know about all your assets, and that's one of our selling points," says one lawyer. "We do not want a situation where it is 'Big Brother is watching you' because clients do not want that. They will go somewhere else."

Dr Dr Batliner & Dr Gasser

Dr Dr Batliner & Dr Gasser works in close partnership with the First Advisory Group, sharing resources to advise clients on setting up foundations, trusts and other international structures for asset management.

It is also branching out into new territory, boasting several lawyers who are specialists in the field of corporate cyber-law.

Peter Monauni is well-respected by the market. "He's a great name from the past and still has a real presence now," says one rival. But it's younger name partner Johannes Gasser who competitors see as key to the firm's future: "He is the most important in the law office, and now he's working a lot in the First Advisory Group, becoming more and more important there."

Leading lawyers

Johannes Gasser
Peter Monauni

Marxer & Partner

Marxer & Partner may have lost three partners in 2007, but its rebuilding work impresses the market. "Those three partners were really good lawyers with great experience," one lawyer says, "but the new guys are doing well and you can see that soon they will be on the same level."

The firm promoted Markus Summer, Christoph Huber, Stefan Wenaweser and Michael Oberhuber to the partnership in 2008. "Michael's a young and refreshing guy who does a good job," one partner says. Another rival says of Wenaweser: "He is gifted and certainly knows what he's doing. He's my favourite there."

"We see them as true competitors," one lawyer says. "They're tier one, that's for sure."

Leading lawyers

Johannes Burger
Herbert Oberhuber
Michael Oberhuber
Stefan Wenaweser

Walch & Schurti

Walch & Schurti remains in the top tier due to the attention to detail and passion of the two founding partners, Ernst Walch and Andreas Schurti. "They really are the chiefs," says one rival. "You can see they have total control over their law office. Everything that goes out and comes in is on their desks."

While banking is the mainstay of the firm's practice, it has been quick to spot the increasing opportunities in insurance and exotic assets, gaining a particular expertise in the market for funds investing in art pieces.

Leading lawyers

Andreas Schurti
Ernst Walch

Batliner & Konrad

Batliner & Konrad moves up the rankings due to the dedication of name partners Andreas Batliner and Karlheinz Konrad. "It's a small law firm but what they do, they do in a decent, nice, precise manner," says one lawyer. "They're both extremely hard-working. They take everything that comes in themselves."

Batliner is particularly well respected in the market: "He's down to the point rather immediately. That's what I like about him. What more can you ask for? He's like a horse working."

Leading lawyers

Andreas Batliner
Karlheinz Konrad

Batliner Wanger Batliner

Batliner Wanger Batliner is strengthening its reputation in Liechtenstein's legal market. "They're the local heroes," one rival says. "It's only a very young law office... International clients will come in the near future."

Ralph Wanger is repeatedly praised by rivals for his intelligent legal analysis, while peers rate Martin Batliner for his work ethic.

Leading lawyers

Martin Batliner
Ralph Wanger

Harry Gstöhl & Partner

Harry Gstöhl & Partner has been less visible in the market this year, but maintains its position in tier two thanks to the contribution of name partner Harry Gstöhl. "Harry has a good reputation. He's smart and sharp," says one rival.

Sabine Mohr-Egger, the firm's other partner, is also building a presence in the market: "She's improving clearly," says a peer.

Leading lawyers

Harry Gstöhl

Law Firm Holz hacker

Law Firm Holz hacker moves up the rankings after positive feedback from clients and peers about lead partner Gerhard Holz hacker.

"I think he must be working the whole day and the whole night," says one rival of Holz hacker, while a client adds: "He's a very qualified attorney. I have known him for

many years and he is experienced and diligent.”

Leading lawyers
Hugo Sele

Leading lawyers
Gerhard Holzhacker

Müller & Partner

Wolfgang Müller continues to attract clients to Müller & Partner. “He’s very experienced and certain clients will just not work without him,” says a peer.

Competitors are convinced that the younger partners at the firm are learning from Müller, and are particularly impressed by Roland Müller and Robert Neudorfer: “If they give you their word, even if it’s not written down, you can trust them, and this makes the job so much easier.”

Leading lawyers
Roland Müller
Wolfgang Müller
Robert Neudorfer

Wanger

Wanger has recovered after losing partner Markus Wille in 2007, and moves up a tier in recognition of its cross-border capabilities. Wanger is the first Liechtenstein law firm to have a presence abroad with its office in Belgium, and has also developed strong partnerships with firms in Austria, Israel, Brazil, China and the US. Wanger also tied up a relationship with Lalin Law Office in Serbia this year.

“They were one of the biggest, grandest firms but they don’t think traditionally,” says a rival. “They are trying new things and you have to respect that.”

Leading lawyers
Markus Wanger

Sele Frommelt & Partner

“You can’t miss them,” says a competitor of Sele Frommelt & Partner. The firm is part of a wider company, Negele Sele Frommelt & Partner, which is dedicated to investment management and provides the law office with plenty of work involving trusts and foundations. But the firm is also present outside this sector: “It’s a long-term practice there and in banking they have good expertise,” says one lawyer.

Name partner Hugo Sele is singled-out by competitors: “He’s down to the point,” says one. “He’s precise and not sloppy. He has an excellent understanding of economics. Again and again he proves that he is capable and gifted.”