

Liechtenstein

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Public offers and prospectus duty

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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

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	

In 2008 Liechtenstein experienced a row with Germany over Liechtenstein's banking and tax secrecy, after a former bank employee sold the information of hundreds of clients to investigators in Germany, the UK and the US for \$4 million. On top of that, US President Barack Obama has started a crackdown on tax havens around the world, with Liechtenstein gaining the full attention of the US.

The events were especially embarrassing for Prince Max, the younger brother of the acting head of state. He is chief executive of LGT, Liechtenstein's biggest bank, which is rumoured to be the hiding place of billions of euros of tax money.

In March 2009 the Liechtenstein government agreed to make its financial sector more transparent and to exchange more tax data with other countries. If tax authorities have serious concerns they can request banks release their clients' account details. "Is this the beginning of the end? Not at all, since it must be a reasonable request," says one senior lawyer. "It must be very precise and concrete. People can still safely hide their money here."

Some lawyers even think it is good for the market. "I don't think it will have a negative impact at all. It will create additional demand," says a senior partner. "The new situation needs to be explained, this will create more work for a certain period of time."

In the meantime, negotiations on information exchange have started with Germany and Britain. Such agreements will be modelled on a landmark deal it reached with the US in December 2008. "We do not accept US clients anymore," says one senior partner. "There is an agreement between the US and Liechtenstein, and unexplainable money from the US is just too risky nowadays."

However, the government released a statement recently stating Liechtenstein will maintain its "modern and solid" banking secrecy laws, fearing billions will be pumped out of the country.

As a reaction to this, Germany declared in March 2009 that it will not grant judicial aid to Liechtenstein in the prosecution of a 2008 whistleblower. It was one of the first times in history Germany ignored the European Mutual Legal Assistance Agreement, with Germany claiming that "public order and interest" prevailed over the prosecution.

"Am I nervous about the market? Well, you never know if you're going to lose," says one partner. "Clients have become more cautious, you can tell by their behaviour on the market."

Liechtenstein's legal community can not do anything else than to hold its breath and wait for the changes to slowly take effect. "Now we have one or two criminal proceedings a year against a trustee – twenty years ago that was unimaginable," says one partner.

Dr Dr Batliner & Dr Gasser

One of the largest firms in Liechtenstein, Dr Dr Batliner & Dr Gasser has been serving its customers for over fifty years. The firm controls the biggest funds company in Liechtenstein, First Advisory, and advises clients from all over the world about how to set up foundations, trusts, funds and other international structures for asset management.

"It is just the immense fund, First Advisory. That really gives them the standing in Liechtenstein," says one competitor. "It is by far the best known and biggest funds company in Liechtenstein."

However the retirement of Herbert Batliner has raised questions in the market about the strength of the firm's leadership going forward.

Leading lawyers

Johannes Gasser
Peter Monauni

Marxer & Partner

Although Marxer & Partner has suffered a number of departures in the last couple of years, it remains one of the largest and oldest firms and a dominant player in the Liechtenstein market.

"They are the only one who did not split their law firm and their company. It is one and the same company. That is very unusual, but they use it as a marketing tool," says one peer.

Leading lawyers

Johannes Burger
Herbert Oberhuber
Michael Oberhuber
Stefan Wenaweser

Walch & Schurti

Walch & Schurti remains at the top and its style is praised among some competitors. "I like their approach. They are refreshing and relatively new," says one rival partner. "Not like some of the other firms which have been around since their grandfathers were babies. They are not that big, but I do hear positive stories about them."

The consortium consists of the law firm, Walch & Schurti, and a medium-sized trust company called WalPart Trust, based in Vaduz.

Leading lawyers

Andreas Schurti
Ernst Walch

Law Firm Holz hacker

"Excellent! That is the service from that firm. He is very practical, and quick. The advice is always obtained quickly," says one client. "I have known Mr Holz hacker for years, I only work with him."

Law Firm Holz hacker maintains its tier two position after moving up a tier last year. Clients are positive about the firm. "I can only say, my experience is very positive," says a client. "I like his expertise and commitment to client needs. He is one of the best lawyers I am working with."

Leading lawyers

Gerhard Holz hacker

Wanger

"Markus Wanger is skilled and experienced, I could send a client there," says a rival partner about The Wanger Group, which consists of the Wanger law firm and the Wanger Trust Company.

This year, Markus Wanger and Johannes Grabher worked for a number of Swiss, French and American banks. For a group of

American investors they take care of litigation matters and criminal proceedings relating to clients in Hong Kong, the US, Switzerland and Liechtenstein, involving in total around \$8 million.

Leading lawyers

Markus Wanger
Johannes Grabher

Sele Frommelt & Partner

The firm is part of a wider consortium called Negele Sele Frommelt & Partner, which specialises in investment management and provides the firm with a lot of work.

Sele Frommelt & Partner has partnerships with Bank Frick, Bank Alpinum, The Dux Trust, Crystal Fund Management and 2thePoint. Some of the firm's partners are also part-time judges in different courts.

Mr Seeger, a partner of the firm, is in charge of the trust fund. A former Prime Minister of Liechtenstein, Mario Frick, is also a partner of the firm.

Leading lawyers

Hugo Sele