Legislation and supervisory authorities in Liechtenstein

VP Bank Ltd, Vaduz, is constituted as a joint-stock company under Liechtenstein law. It is the parent company of VP Bank Group. The competent supervisory body in its country of domicile is the Liechtenstein Financial Market Authority (FMA). As the bearer shares of the parent company are listed on SIX Swiss Exchange, VP Bank is also subject to the regulations laid down by SIX on the basis of the Swiss Federal Act on Stock Exchanges and Securities Trading and the related implementing ordinances. The business activities of VP Bank Group are supervised by the local competent authorities of each country in which the Group is active through subsidiary companies or representative offices.

General

In Liechtenstein, the activities of VP Bank are subject primarily to the Act on Banks and Finance Companies (Banking Act, BankA) of 21 October 1992 as well as the Ordinance on Banks and Finance Companies (Banking Ordinance, FL-BankO) of 22 February 1994. The Banking Act lays down the framework for the supervisory activities of the FMA. The latter – together with the external banking-law auditors, who must possess a licence from the FMA and are subject to its supervision – constitutes the main pillar of the Liechtenstein system of supervision.

Under the Banking Act, banks and securities firms in Liechtenstein can offer a comprehensive array of financial services. The Law on Professional Due Diligence to Combat Money Laundering, Organised Crime and Terrorist Financing (Due Diligence Act, DDA) of 11 December 2008 and its related Ordinance (Due Diligence Ordinance, DDO) of 17 February 2009 – in conjunction with the article on money-laundering contained in Art. 165 of the Liechtenstein Penal Code – constitute the relevant legal foundation for the entire financial services sector in Liechtenstein. These have been revised on repeated occasions and correspond to international demands and standards.

Within the scope of its business activities and the financial services offered by it, VP Bank must, in particular, observe the following laws and related ordinances:

- Payment Services Act (PSA)
- Law on Certain Undertakings for Collective Investments in Transferable Securities (UCITSA)
- Law on Investment Undertakings for Other Assets or Real Estate (Investment Undertakings Act, IUA)
- Law on Alternative Investment Fund Managers (AIFMA)
- Law Governing Supplemental Supervision of Companies of a Financial Conglomerate (Financial Conglomerate Act, FCA)
- Law Governing the Disclosure of Information Relating to Issuers of Securities (Disclosure Act, DA)
- Securities Prospectus Act (SPA)
- Law Against Market Abuse in the Trading of Financial Instruments (Market Abuse Act, MAA)
- Law Governing Takeover Offers (Takeover Act, TOA)
- Persons and Companies Act (PCA)

The following section discusses a number of developments relevant for financial market regulation and applicable legal principles which have been revised or put into effect during the past financial year or are likely to be of relevance in the future.

International Taxation Agreements

With its announcement of 12 March 2009, Liechtenstein undertook to implement the global standards on transparency and the exchange of information in matters of taxation in accordance with the OECD standard. Since then, Liechtenstein has concluded numerous international taxation treaties, including both double-taxation agreements (DTAs) as well as Tax Information Exchange Agreements (TIEA) pursuant to the OECD model.

Liechtenstein is seeking, in particular, to revise the partial agreement between the Principality of Liechtenstein and the Swiss Confederation on various tax issues dating back to 17 December 1996 and to agree upon a DTA which conforms to the OECD model. The related negotiations between Liechtenstein and Switzerland were completed in February 2015 and the DTA is expected to enter into force by 1 January 2017.

Furthermore, the agreement with Austria signed on 29 January 2013 on cooperation in the area of taxation as well as the protocol on the amendment of the existing DTA entered into force on 1 January 2014. On the basis of the taxation agreement, all assets held by persons resident in Austria were subject to an additional tax assessment on the basis of an anonymous one-off payment or disclosure of the banking relationship as of 31 May 2014 or 30 June 2014. Since 1 January 2014, the current taxation of income from capital in the accounts / security deposit accounts involved has been levied using a lump-sum tax rate of 25 per cent or on the basis of voluntary disclosure.

Automatic Exchange of Information

With the government declaration of 14 November 2013 and drawing on the previous financial centre strategy, Liechtenstein again reaffirmed its commitment to the applicable OECD standards. Liechtenstein thus signed the Multilateral Convention of Mutual Administrative Assistance in Tax Matters on 21 November 2013, which regulates the various forms of cooperation in the field of taxation (in particular, the exchange of information). In addition, the efforts in the area of tax transparency on an international level were accelerated during 2014. A multitude of bilateral and multilateral agreements are due to be replaced in future by a uniform standard for the automatic exchange of information. The framework conditions for this global solution were laid down in mid-2014 by the Organisation for Economic Co-Operation and Development (OECD) in its set of regulations establishing uniform reporting standards.

The standard has two component parts: The first part consists of a so-called Competent Authority Agreement (CAA), a model agreement forming the basis for the exchange of information and which contains the scope of information, the mode of transmission and the rules of cooperation. The second part of the standard contains a Common Reporting Standard (CRS) including a commentary regarding application. This latter lays down the reporting and procedural rules, details as to the identification of clients, the financial information to be reported and the financial intermediaries involved. Details of the new standard are still open. Both within the EU as well as other countries, including Liechtenstein, which have undertaken as "early adopters" to implement the OECD directives in the quickest possible manner (joint statements of 19 March 2014 and 1 August 2014), the new standard will apply from 2016 onwards. On 29 October 2014, Liechtenstein agreed to this together with 50 other countries within the framework of the first multilateral agreement on the automatic exchange of information. In accordance with this agreement, financial information for the tax year beginning on 1 January 2016 shall be relevant and the first effective exchange of data will ensue in 2017.

Various other countries, including Switzerland and Singapore, have announced that the implementation of the OECD standard in their countries will be delayed by one year (until 2018). Overall, it must be assumed that the automatic exchange of data will be implemented internationally by 2018 at the latest. The standard will obligate banks, in a manner to that required by FATCA, to undertake a comprehensive review of and to take measures to identify existing client relationships and reporting duties with all partner countries participating in the exchange of information.

Directive of the Bankers Association on Tax Compliance

With the directive of 1 September 2013, Liechtenstein banks have agreed on uniform minimum standards to be applied in relation to the due diligence requirements concerning tax compliance. The related principles continue to apply and obligate banks to clarify the origin of assets and to review compliance with tax laws using a risk-based approach prior to the commencement of business relationships and the acceptance of new assets.

The directive also includes restrictions in the case of cash transactions. As cash transactions are potentially suitable for promoting tax evasion, tax fraud and other tax offenses, the provisions regarding cash withdrawals will be tightened across the board. Cash withdrawals exceeding CHF 100,000 will thus only be permitted in cases in which, inter alia, it is plausible that this will not facilitate the committal or continuation of a tax offense. Banks are also obligated to ensure particular control mechanisms for such cash withdrawals in their internal business rules.

Revision of Tax Act

The Tax Act, which entered into force on 1 January 2011, was partially revised during 2014. In addition to various specifications made, new rules were introduced, in particular as regards the taxation of persons with restricted tax liability as well as the deductibility of capital contributions made to occupational pension schemes.

In addition, the changes now provide for an additional lump-sum deduction of 6 per cent of total assets in calculating modified equity (excluding amounts already deducted such as own shares, shareholdings). Finally, the revised Tax Act contains statutory regulations for legal entities regarding the taxation of realised gains of accumulating investment funds which are treated as having been distributed and paid out annually. They are thereby treated the same as direct investments. Accordingly, the return arising from equity paper remains tax-exempt; investment income and gains on the sale of other capital investments are taxable. Details, in particular regarding the application of substantive tax exemptions in the case of mixed funds, are set out in a bulletin issued by the Liechtenstein Tax Administration. In addition, rules were issued for write-downs or valuation allowances on shareholdings in domestic and foreign legal entities, the offsetting of losses from a foreign branch as well as, pursuant to Art. 9 para. 3 of the Tax Act, an option for taxing the tax advantages received with the wealth tax on a substitution basis in the case of an irrevocable foundation, special dedications of assets or foundation-like establishments.

The new legal rules are to be applied retroactively to the tax assessment for the 2014 tax year.

In addition, in its Report and Petition No. 89/2013 of 22 October 2013, the government has proposed a second tax amnesty which is due to be available to Liechtenstein clients with undeclared assets during the period from 1 January 2014 to 31 December 2014. During the introductory debate in the Liechtenstein Parliament ("Landtag"), concerns were expressed in some cases regarding a further amnesty.

With its Report and Petition No. 5/2014 of 28 January 2014 and with the aim of avoiding an accumulation of amnesties, the government has proposed the introduction of a one-time non-punishable voluntary disclosure along the lines of the

Swiss model. In accordance with this, those individuals who report a punishable offence committed by themselves pursuant to the provisions of the Tax Act for the first time after 1 January 2011, provided this is not because they are in imminent danger of being discovered, shall only have to pay the supplementary tax together with interest on arrears for the preceding five years. Neither fines nor surcharges as provided for under Art. 142 of the Tax Act will be levied. During a transitional period until the end of 2014, individuals who are subject to taxes on net worth and personal income will benefit from a simplified procedure for the supplementary declaration. On request, the supplementary tax to be levied will be calculated by applying a lump-sum tax rate to all undeclared assets as of 1 January 2013. This lump-sum tax rate is 2.5 per cent plus the additional municipal tax rate. In the event that a taxpayer makes a further voluntary disclosure, a fine equal to one-fifth of the tax evaded will be levied. These amendments were adopted by the Landtag on 13 March 2014. They take effect retroactively as of 1 January 2014.

Tax offenses as Predicate Offence to Money Laundering / 4th Money Laundering Directive

On 16 February 2012, the Financial Action Task Force (FATF) issued its revised recommendations for combating money laundering, the financing of terrorism and the proliferation of weapons of mass destruction. The revised recommendations also provide, amongst other changes, for an extension of the list of predicate offences to include severe tax offences.

This means that banks, insurance companies and other financial intermediaries must in future inform the national money laundering reporting office – in Liechtenstein, the Financial Intelligence Unit (FIU) – in the case of suspicion. The latter in turn is obligated, if need be, to forward the information to foreign reporting offices.

After the publication of the new recommendations of the FATF, the European Commission announced that the EU legal framework will be updated and the necessary amendments will be made without delay.

A draft of the 4th EU Money Laundering Directive has been available since February 2013. In February 2014, the competent specialist committees of the European Parliament gave their consent to the draft guidelines submitted by the EU Commission and in the second half of 2014 deliberations were held with the EU Commission and the Council of Ministers. The implementation of the 4th EU Money Laundering Directive is not expected before 2016. In Liechtenstein, the government, the Financial Market Authority, the Bankers Association and the FIU are following developments very closely and reviewing whether and in which form there might ensue a need for action for the Liechtenstein financial market. With the decision of the government of Liechtenstein of 30 September 2014, a working group has been commissioned to submit a consultative document by 1 December 2014 to implement the new standards relating to tax offenses as a predicate offense to money laundering. In particular, this shall incorporate the following changes:

- Wider-ranging directives for the application of the risk-based approach
- Broadening of the provisions concerning politically exposed individuals (so-called PEPs) which in future will also extend to domestic PEPs as well as individuals who hold an important office in an international organisation.

Revision of Tax Administrative Assistance Act and Tax Administrative Assistance Act with the United States of America

In its Peer Review report of September 2011 as well as in the Supplementary Report of October 2012, the Global Forum on Transparency and Exchange of Information for Tax Purposes recommended to Liechtenstein that it provides for exceptions in certain cases as regards the prior notification of the persons involved in mutual assistance procedures (so-called secret proceedings). In the Report and Petition No. 54/2014 of 6 May 2014, the related proposals for the amendment of the Tax Administrative Assistance Act (TAAA) and Tax Administrative Assistance Act with the United States of America (TAAA-USA) were presented.

The Liechtenstein TAAA and TAAA-USA guarantee the comprehensive involvement of the persons concerned in the proceedings. As under the current Liechtenstein proceedings for mutual administrative assistance in tax matters, the inspection of files must be granted no later than the moment that the Tax Administration's final decree is contested – it is currently not possible to transmit tax information to foreign taxation authorities in exceptional cases without the prior notification of the persons concerned. With the proposed amendments, an exception to the prior notification of these individuals is provided for. This is restricted to those requests for mutual administrative assistance in which the notification of the persons concerned would clearly thwart the success of the foreign investigatory proceedings.

The fulfilment of the preconditions is to be justified by the foreign authority on a case-by-case basis. Should the Tax Administration come to the conclusion that these are met, it shall forward the request without delay to the competent single judge of the Administrative Court and apply for authorisation of the enforcement of the request for administrative assistance while maintaining a ban on information.

Even within the framework of exceptional proceedings, the international principle shall continue to prevail, according to which the competent foreign authorities must first and foremost exhaust all appropriate means available in their territory to procure the information prior to embarking on a request for mutual administrative assistance (so-called principle of subsidiarity). Furthermore, details as regards the release of information by the information holder, the rights of the persons concerned and the lifting of the ban on information are also regulated.

The amendment above to the TAAA and the TAAA-USA was discussed on 5 June 2014 in the Landtag at first reading.

US Tax Legislation / Foreign Account Tax Compliance Act (FATCA)

The Foreign Account Tax Compliance Act (FATCA) issued by the USA contractually obligates foreign financial institutions (FFIs) to identify those clients of theirs who are liable to unrestricted tax in the US and disclose the assets and income of the clients to the US tax authorities (Internal Revenue Service, IRS).

The disclosure and reporting obligations resulting from this Act are primarily assured through bilateral agreements between the US and the respective target state, which, at the same time, represent, together with related national legislation, the legal basis for the aforementioned obligations. The Liechtenstein FATCA Act was published on 22 January 2015. At present, two different models are employed worldwide which are designated as intergovernmental agreements (IGA). Both models differ principally in that under Model 1, the FFIs discharge their reporting obligations to the respective national tax authority, which then passes on the data to the IRS, whereas under Model 2, the reporting obligations are discharged directly to the IRS. Liechtenstein has opted for IGA 1, whereas Switzerland has taken the path of IGA 2. Through FATCA, the US is attempting to introduce a seamless system for the global exchange of information on individuals who are liable to unrestricted tax in the US (US persons), while at the same time attaining a high degree of tax transparency. To ensure this, FATCA provides for the introduction of a 30 per cent withholding tax on all US payment flows (dividends, interest, proceeds from sales of US securities, etc.). The levying of this tax is waived, however, insofar as the related financial institutions fulfil their obligations resulting from the FATCA legislation. In order to attain the status of a so-called Participating FFI (PFFI or Reporting Model 1/2 FFI) under the FATCA regime, the FFI must register with the IRS in order to receive a Global Intermediary Identification Number (GIIN).

With this GIIN, which is published in a central IRS register, the PFFI identifies itself in future in business transactions as a FATCA participant, thereby avoiding, in particular, the requirement to withhold 30 per cent withholding tax on all incoming US payment flows.

The GIIN is further required in order to meet the reporting obligations (FATCA reporting) and to complete and submit the necessary US reporting forms (e.g. forms 8966/1042/1042-S) in an orderly manner. FATCA reporting is performed annually. It will commence with the 2014 calendar year as the reporting period, meaning that the first FATCA reports will be made in 2015 for the 2014 reporting year.

A Participating/Reporting FFI shall review and, as part of this review, identify and document all accounts held, directly or indirectly, by US persons.

Where individuals are the account holder, a distinction is to be made between three client categories:

- US reportable accounts: These refer to those client relationships with US persons that have already been disclosed as such under the Qualified Intermediary (QI) rules or can be clearly classified as US persons (US citizenship, US residence) or can qualify as US persons on the basis of data available to the financial institutions or of unrefuted US indices (e.g. place of birth in the US).
- Non-US accounts: These are client relationships with persons who, on the basis of the review, are not designated as US persons as these are not liable to unrestricted taxation in the US.
- Recalcitrant accounts: These refer to relationships with clients who are classified as US reportable accounts on the basis of the available facts or indices but for which the account holder/contracting party has not submitted the required documents. As, on the basis of the Liechtenstein FATCA, all financial institutions are exempted from the respective secrecy obligations in relation to FATCA reporting, no recalcitrant accounts are maintained in Liechtenstein.

In addition, in the case of account holders which are companies and legal entities, VP Bank will have their FATCA status confirmed by the account holders. In this client category, VP Bank Ltd must only report in accordance with FATCA in those cases where the company or legal entity is identified as being a so-called "passive NFFE with US controlling persons".

In the case of all other FATCA statuses, the reporting and ongoing identification and document duties in connection with the beneficiaries/members/partners remain with the respective company or legal entities themselves.

VP Bank and all Group companies are registered with the IRS and possess a corresponding GIIN.

As of 22 December 2014, 45 countries had concluded a Model 1 IGA with the US and seven countries a Model 2 IGA.

A further 53 countries have reached an advanced stage in negotiations with the US regarding a Model 1 IGA and seven countries a similar stage regarding a Model 2 IGA.

Markets in Financial Instruments Directive (MiFID II)

MiFID II shall be applicable in Liechtenstein from 3 January 2017 onwards. The motivation to revise MiFID is the experience gained in the financial crisis of 2007/2008. The revised version of the MiFID Directive 2014/65/EU as well as the directly applicable Ordinance No. 600/2014 (MiFIR) are designed to render financial markets more efficient, more resilient and more transparent, reinforce investor protection, enhance the supervision of less well regulated markets and tackle the problem of excessive price volatility on commodity markets. MiFID II now encompasses the whole chain of added value from the distribution of to trading in financial instruments. The European Securities and Markets Authority (ESMA) has been given the authority to issue implementing ordinances for MiFID II to which great importance is attached but which most probably will only become available in the second half of 2015.

MiFID II introduces the following central changes, the implementation of which will set new strategic directions as a consequence:

- **Dependent/independent investment advisory services:** Banks must decide whether they wish to appear as dependent or independent investment advisors on the market. As independent investment advisors, banks may no longer accept retrocessions or similar benefits from third parties. In elaborating investment recommendations, independent investment advisors must take into consideration a sufficient number of financial instruments offered on the market (diversified in terms of product type and issuer). In this respect and more particularly, they may not only restrict themselves to financial instruments of issuers or product providers which are closely related to the advisory bank (e.g. through distribution contracts).
- **Suitability report:** More stringent documentation and disclosure duties shall apply to both dependent and independent investment advisors. In particular, client must be informed as to the extent to which the advice was aligned with their preferences, objectives and other attributes.
- **Portfolio management:** In portfolio management, the acceptance of retrocessions or similar benefits from third parties is forbidden across the board. In periodic suitability reports, the client must be informed as to the extent the investment guidelines have been complied with and if not, of the reasons why not.
- **Product governance:** Banks must ensure actual product governance. They must identify the risks associated with the financial instruments offered, determine the client base whose requirements correspond to the financial instrument and ensure that the latter is only distributed to the defined target groups. The analysis of the financial instruments must be repeated periodically.
- **Diversity:** Management and supervisory bodies of financial institutions must take into account the principle of diversity, i.e. that the respective bodies should be composed of a diversified number of individuals according to age, sex, education, profession and origin.
- **Duty to maintain records:** Additional recording duties are established for telephone conversations or other forms of electronic communication which deal with the area of investment advisory services and the issuance of orders in connection with financial instruments. Private means of communication (e.g. private mobile phones) in principle may not be used for contact with the clients.
- **Rules pertaining to third countries:** There is a uniform regime for the services of eligible counterparties and professional clients (e.g. insurance companies, investment-fund companies) regarding the cross-border activity of financial institutions from third countries (countries outside the EU/EEA, e.g. Switzerland). In these cases, only registration with the ESMA is required which, however, depends on whether the rules applicable to the financial institution in the respective third country were recognised by a decision of the EU Commission as being equivalent.

After registration is completed, financial institutions will be able to service clients EU-wide from the third country concerned. The national regulations currently in force may still be applied during a transitional period of three years from the date of the decision on equivalence. In the case of contacting private clients on a cross-border basis, there is only a partially uniform regime available. Each EU/EEA member state continues to be free to prevent the serving of private clients in a cross-border relationship and to prescribe the mandatory establishment of a branch. If this should be the case, however, the same requirements for the establishment of a branch shall apply EU/EEA-wide. The provision of banking services on a cross-border basis continues to be possible upon the sole initiative of the client (passive freedom to provide services).

As already mentioned, the implementation of MiFID II will require strategic decisions to be taken by financial institutions, in particular as regards the manner in which investment advisory services are organised. In addition, there will be the additional challenge in that the implementing regulations of ESMA are sure to have a significant influence on the enforcement of MiFID II and the related freedom of action of financial institutions to organise their activities, on the one hand, and on the other, the fact they will most probably not be available prior to the second half of 2015.

Crossborder Transactions

The legal and reputational risks inherent in cross-border financial services have increased noticeably in recent years. From a supervisory-law perspective, it is expected in this respect that banks identify and, where possible, minimise these risks, particularly in their target markets. Serving this purpose are mandatory rules of conduct specific to each country for employees as well as suitable business processes with which compliance with the applicable foreign supervisory law can be ensured. All booking centres of VP Bank Group fulfil these requirements and ensure adequate training as well as appropriate control mechanisms for employees entrusted with cross-border business.

Implementation of the CRD IV Package

The EU issued the so-called CRD IV package as a reaction to the 2008 financial market crisis; this comprises the Capital Requirements Regulation (CRR IV) in addition to the Capital Requirements Directive (CRD IV). These European guidelines were implemented through a revision to the Banking Act and various other normative texts and adopted in the legislation of Liechtenstein. In particular, the system of investor compensation was also expanded.

Included therein are provisions on improving and tightening capital-adequacy and liquidity requirements (equity buffer) and thus the banks' internal policies on managing equity resources, on risk management, on corporate governance (stricter requirements for supervisory and management

bodies), on the EU-wide harmonisation of the sanctions framework and cooperation between supervisory authorities. In addition to banks, securities firms, asset managers, management companies and AIFM are now obligated to join a system of investor protection and supervisory cooperation. The Liechtenstein Bankers Association has resolved in this regard to open its investor protection system to other financial intermediaries.

Brief overview over Investment Fund Legislation

As regards securities-based investment funds, the Liechtenstein Landtag had already issued the Act on Certain Undertakings for Collective Investments in Transferable Securities (UCITSA) on 28 June 2011 in implementing the so-called UCITS IV Directive of the EU.

In contrast, two laws exist currently as regards non-securities-based investment funds:

- The Act on Alternative Investment Fund Managers (AIFMA) which entered into force on 22 July 2013 and was issued to implement the AIFM Directive of the EU.
- The previously existing Act on Investment Undertakings for Other Assets or Real Estate (IUA).

The AIFMA and the IUA will remain in effect in parallel for the time being as the AIFM Directive of the EU has yet to be adopted under EEA law and accordingly, Liechtenstein has not yet received the EU passport for alternative investment funds (AIF).

Outstanding EU Passport for Alternative Investment Funds (AIF)

The reason for the absence of the EU passport for alternative investments in accordance with the AIFM Directive is that various EU Acts, including the AIFM Directive, have not yet been adopted under EEA law because of concerns about unconstitutionality raised by Iceland and Norway in relation to the new European Financial Supervisory Authorities. On the occasion of a meeting of the EFTA finance ministers with the Council of Europe on 14 October 2014, however, it was made known that the EU and EEA/EFTA countries were able to find a solution for the adoption in the EEA Agreement of the legislation concerning the new European Financial Supervisory Authorities, thereby including, inter alia, the adoption of the AIFM Directive.

The technical EEA procedural steps necessary for adoption will, however, still require some time. Currently, it is estimated that the adoption of the AIFM Directive under EEA law, with the ensuing receipt of the EU passport for AIF, will take place during 2015.

Creation of a Liechtenstein Act on Special Investment Funds

Following the aforementioned adoption of the AIFM Directive under EEA law, the majority of Liechtenstein legislation pertaining to investment funds (UCITS, i.e. securities and alternative investment funds) is bound by European directives (UCITS and AIFM Directive). Accordingly, there remains little room for purely national legislation for investment funds.

In autumn 2013, the Steering Committee of the Liechtenstein investment fund marketplace commissioned a project group comprising experts from Liechtenstein financial centre associations to undertake a detailed review aimed at speeding up the creation of a special law on investment funds. The project team is currently working on the elaboration of a proposal for such a purely national law on investment funds for single investor, family and interest group funds.

Amendment of UCITSA

The adoption of the so-called UCITS IV Directive in the Liechtenstein UCITSA led to a state of over-regulation, which in practice proved to be very unfavourable and a competitive disadvantage for the Liechtenstein marketplace for investment funds.

Very expensive provisions exist for the merger of UCITS investment funds and costs are incurred which cannot be charged to the funds. The previous Art. 49 of the Liechtenstein UCITSA also prescribed the applicability of these onerous merger provisions of the UCITS Directive for other "structural measures" (such as change of management company or depositary), although this is not foreseen in the UCITS Directive itself. Accordingly, the other structural changes should be viewed, as in other European countries, as a modification of the constituent documents (Art. 11 UCITSA), for which a simpler procedure applies.

On 27 January 2015, the government of Liechtenstein issued a Report and Petition on this matter which is designed to eliminate the aforementioned excessive regulation (consultation period ending on 16 January 2015).

EBA and ESMA guidelines

The relevant EU ordinances which form the basis for regulating the powers of authority of the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) regarding the issuance of guidelines has still not been adopted in the legislation of the EEA. The background to this delay relates to the enforcement of liability, from a supervisory law perspective, of these authorities on the individual financial institutions in EEA/EFTA countries which goes hand in hand with the creation of the European System of Financial Supervision (ESFS) but which poses issues of unconstitutionality in the case of Norway and Iceland. The implementation of these ordinances in the EEA/EFTA zone is accorded the highest priority.

As a transitional measure, the Liechtenstein legislator has subjected the FMA Act to a partial revision: since 1 January 2014, the FMA has had the option to apply the guidelines of the aforementioned authorities insofar as no justified grounds exist to depart from these.

In this respect and within the scope of the review for their adoption, numerous guidelines were submitted by the FMA via the LBA during the year to Liechtenstein banks requesting their opinion. The guidelines requiring assessment deal, inter alia, with the following subjects:

- Handling of complaints for securities trading and banking
- Survey of remuneration figures for the preparation of benchmarking data regarding the remuneration policy of financial institutions by the EBA
- Transfer of significant credit risks in connection with securitisation transactions
- Drawing up of restructuring plans
- Handling of recapitalisations financed by public institutions

These and other guidelines published by the EBA and ESMA in 2014 focused on the areas of financial statement reporting and risk management.

Directive on the Recovery and Resolution of Credit Institutions / Financial Stability Act

The EU issued the Directive on the recovery and resolution of credit institutions (RL 2014/59/EU) in order to take preventive steps in future to deal with a crisis as well as overcoming the insolvency situation of a bank. This Directive, which will in all probability be adopted in the EEA Agreement during the course of 2015, must first be implemented under national law, the Financial Stability Act, before it can become applicable in Liechtenstein.

Moneyval Assessment

Moneyval, the Committee of Experts of the Council of Europe on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, visited Liechtenstein in 2013 within the scope of its fourth evaluation round and conducted an assessment of the financial centre as well as of the legal bases and implementation of the standards aimed at combating money laundering and the financing of terrorism. Moneyval periodically assesses compliance with all relevant standards aimed at combating money laundering and the financing of terrorism by member states and aims to guarantee that member states have effective systems in place for preventing these offences.

The resulting report of the fourth evaluation round was published on 3 July 2014 and contained a positive assessment for Liechtenstein. In particular, Liechtenstein has made significant progress since the last assessment in 2007. It was noted that its legal bases meet the global standard in the field of combating money laundering and the financing of terrorism. It was also noted, however, that further action was required particularly regarding the effectiveness of criminal prosecution and preventive measures, the right to information on the part of the authorities as well as in the transparency of companies and corporate entities. A progress report to Moneyval will need to be prepared by April 2016 as part of the implementation of the recommendations which Liechtenstein has approached in a consistent manner.

The report can be viewed on the website of the Committee of the Experts of the Council of Europe (http://vpbank.org/JXrjr).

Revision of FIUA

On 9 December 2014, the government of Liechtenstein issued a consultative report concerning an amendment to the Act on the Financial Intelligence Unit ("FIUA") as well as other laws.

Following the modifications made to the standards of the Financial Action Task Force (FATF) in 2003 and 2013 regulating the combating of money laundering and the financing of terrorism as well as after the Moneyval country assessments of 2008 and 2014 which were based thereon, it was the view of the Liechtenstein government that the FIUA dating from 2002 required a fundamental overhaul.

The most significant modifications concern the following points:

- The creation of a clear legal basis for the FIU's right to information as well as a clarification that this right may not be opposed by professional or official secrecy instituted under special laws
- The creation of sanction norms in cases in which the right to information is denied
- The replacement of the rigidly formulated freezing of assets as prescribed currently under Art. 18 para. 2 of the Due Diligence Act (maximum five working days) in favour of a more flexible regime
- The extension of the ban on information until the time of filing a suspicious activity report and request for information by the FIU
- The creation of the bases for the appropriate deletion of amassed data relating to individuals
- The improved protection of entities subject to due diligence obligations which reports to the FIU, while the report itself in future is no longer to be forwarded to the prosecuting authorities

In the same vein, the government of Liechtenstein proposes to amend the Due Diligence Act, the Act on Market Abuse, the Banking Act as well as further legislation in order to make the changes regarding the tasks of the FIU rendered necessary as a result of the complete overhaul of the FIUA. The consultation period ended on 18 February 2015.

Amendment to the Penal Law on Corruption

On 16 September 2014, the government of Liechtenstein issued a consultative report concerning a revision to the Penal Code, the Code on Criminal Procedures, the Tax Law and other laws understood under the term "Revision of the Penal Law on Corruption".

With this proposal, the Liechtenstein penal law on corruption is designed to be aligned with international standards (United Nations Convention on Corruption, UNCAC).

An essential element of these two enactments of public international law is the sanctioning of active and passive bribery in the private sector.

With the introduction of the new provisions on active and passive corruption in business relationships (Art. 309 of the Penal Code), the overhaul of the existing criminal corruption offences (Arts. 304 to 308 of the Penal Code) as well as the new legal definition of the office holder (Art. 74 para. 1 point 4a lit. a to c of the Penal Code), these international implementation obligations are now complied with.

A further focus of the proposals is the revision of the system of decrees relating to property rights which had given rise to criticism in the recent past in the Moneyval/IMF assessment of Liechtenstein. In addition to the introduction of a provision on confiscation in Art. 19a of the Penal Code, the discontinuation of the prescriptions concerning asset recovery and the introduction of new provisions on forfeiture as well a reform of the existing prescriptions on forfeiture (Arts. 20 et seq. of the Penal Code) are the most significant amendments of note.

The original consultation period (until 16 December 2014) was extended to 4 May 2015 upon application by two associations.

Revision of the Act on Market Abuse

In November 2014, the Landtag adopted an amendment to the Act on Market Abuse. Issuers will in principle be subject to a publication requirement relating to insider information concerning them directly. In addition, they or agents acting on their behalf are obligated to maintain a list of insiders. This is to contain details of individuals who regularly, on a case-by-case basis, have access to insider information, directly or indirectly, relating to issuers. The list is to be kept up to date and be submitted, upon demand, to the FMA. The new provisions apply to all financial intermediaries under its supervision as well as non-financial intermediaries whose financial instruments have been admitted or have filed an application for admission to a regulated market within the EEA.

Act concerning the supervision of persons pursuant to Art. 180a Persons and Companies Act (PCA)

As of 1 January 2014, the FMA assumed new supervisory tasks and, in this respect, intensified supervision of trustees and trust companies by now also subjecting to supervision persons exercising an activity pursuant to Art. 180a of the PCA. The new supervision regime enhances the protection of clients and reinforces the international recognition of the Liechtenstein financial centre.

Introduction of the Protected Cell Company (PCC)

In November 2014, the Landtag adopted the new provisions concerning the so-called "protected cell company", which took effect on 1 January 2015 (Art. 243 to 243g of the PCA). This term does not refer to a new legal form but all legal entities under the PCA required to be entered into the public register, or which have registered voluntarily, may be established as a protected cell company or adopt this status subsequently as a result of conversion.

Protected cell companies are required to comprise two organisational parts: a core and one or more segments which are segregated from each other. The particular attribute of the protected cell company is that the assets of the individual segments are segregated from each other and from the assets of the core. However, only the protected cell company itself acquires legal personality, not the individual segments.

Protected cell companies may only be segmented when they exclusively pursue one or more of the following objects:
- Philanthropic or charitable purposes within the meaning of Art. 107 para. 4a of the PCA
- The acquisition and exploitation of investments in other companies (subsidiaries)
- The exploitation of intellectual property rights
- The establishment of deposit guarantee and investor protection systems in compliance with applicable EEA legal prescriptions

The company or name of the protected cell company must be followed by a corresponding addendum (Protected Cell Company or PCC; Segmentierte Verbandsperson or SV in German). The protected cell company shall inform in writing all third parties with whom it has legal relationships about its status as a protected company and shall designate the segment, or if applicable, the core with whose assets it bears liability for the legal relationship concerned. Bankruptcy proceedings can be initiated by the protected cell company itself as well as in respect of each of the individual segment assets.

European Market Infrastructure Regulation – EMIR

In September 2009, the G20 countries agreed that all standardised OTC derivatives contracts are to be processed via a central counterparty and OTC derivatives contracts are to be recorded in a transaction register.

The EU Commission gave recognition to this matter by issuing Ordinance (EU) No. 648/2012 of 4 July 2012 pertaining to OTC derivatives, central counterparties and a transaction register ("European Market Infrastructure Regulation – EMIR"). The EMIR obligations on the agreement of risk mitigation techniques and the reporting of OTC derivative contracts to a transaction register are already in force in the EU. Depending on the categorisation of market participants, a step-by-step introduction of OTC derivative contracts which must be processed over central counterparties will start in 2015.

It is thus estimated that EMIR will in all probability be adopted in the EEA Agreement during the course of 2015, after which the EMIR obligations will also apply in Liechtenstein.

Important links to legislation and the Liechtenstein financial centre

FMA, Financial Market Authority Liechtenstein	www.fma-li.li
Body of Liechtenstein law	www.gesetze.li
Official web portal of the Principality of Liechtenstein	www.liechtenstein.li
Liechtenstein National Administration	www.llv.li
Landtag of the Principality of Liechtenstein	www.landtag.li
Liechtenstein Bankers Association	www.bankenverband.li
Liechtenstein Investment Fund Association	www.lafv.li
Liechtenstein Association of Professional Trustees	www.thv.li
Liechtenstein Association of Auditors	www.wpv.li
Liechtenstein Chamber of Commerce and Industry	www.lihk.li
Liechtenstein Economics Chamber	www.wirtschaftskammer.li
Liechtenstein Insurance Association	www.versicherungsverband.li
Association of Independent Asset Managers	www.vuvl.li
Association of Non-Profit Foundations in Liechtenstein	www.vlgs.li