



**UNODC**

United Nations Office on Drugs and Crime

## **Country Review Report of Liechtenstein**

Review by *Australia* and *Namibia* of *Liechtenstein's* implementation of articles 5 - 14 of Chapter II “Preventive measures” and articles 51 - 59 of Chapter V “Asset recovery” of the United Nations Convention against Corruption for the second review cycle (2016 - 2020)

## I. Introduction

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1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention (the Review Mechanism). The Review Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## II. Process

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5. The following review of Liechtenstein's implementation of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Liechtenstein, other supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Australia, Namibia and Liechtenstein, by means of telephone conferences and e-mail exchanges and involving, inter alia, the following experts:

### Liechtenstein:

- Mr. Patrick Ritter, Deputy Director, Office for Foreign Affairs

### Australia:

- Ms. Jane Bloomfield, Senior Legal Officer, Criminal Law Policy Branch, Attorney-General's Department
- Ms. Louise Finucane, First Assistant Parliamentary Counsel, Office of Parliamentary Counsel
- Mr. Stephen Morris, Legal Officer, Criminal Law Policy Branch, Attorney-General's Department

### Namibia:

- Ms. Gladice Pickering, Deputy Chief, Legal Service and International Cooperation, Ministry of Justice

- Ms. Christine Mulemwa Liswaniso, Chief Public Education and Corruption Prevention Officer, Directorate of Public Education and Corruption Prevention, Anti-Corruption Commission
- Ms. Victoria Shikukumwa, Senior Investigating Officer, Anti-Corruption Commission

Secretariat:

- Mr. Oliver Landwehr, Crime Prevention and Criminal Justice Officer, UNODC
- Ms. Tatiana Balisova, Associate Crime Prevention and Criminal Justice Officer, UNODC

6. A country visit, agreed to by Liechtenstein, was conducted from 16 to 19 January 2017. During the country visit, the reviewing experts met with the following Liechtenstein representatives:

- Mr. Patrick Ritter, Deputy Director, Office for Foreign Affairs
- Mr. Andreas Schädler, Head of the Crime Investigation Division, National Police
- Mr. Thomas Kind, Director, Office of Human and Administrative Resources
- Mr. Nicolas Xander, Commercial Register Division, Office of Justice
- Mr. Rainer Marxer, President, Liechtenstein Association of Auditors
- Mr. Daniel Seger, President, Complaint Commission for Administrative Matters
- Dr. Sybille Vogt, Vice-President, Complaint Commission for Administrative Matters
- Dr. Michael Jehle, Judge, Princely Court of Justice
- Dr. Frank Haun, Deputy Prosecutor-General, Office of the Public Prosecutor
- Mr. Andreas Gritsch, Director, Financial Affairs Unit
- Mr. Oliver Hermann, Vice-Director, National Audit Office
- Dr. Andrea Quaderer, Legal Officer, Specialized Unit for Public Procurement
- Mr. Philipp Röser, Executive Officer, Legal/International Affairs, Financial Market Authority
- Ms. Bianca Hennig, Executive Officer, Legal/International Affairs, Financial Market Authority
- Mr. Amar Salihodzic, International Affairs Officer, Financial Intelligence Unit
- Mr. Harald Oberdorfer, Legal Officer, Judicial Affairs Division, Office of Justice
- Ms. Andrea Brüllmann, Legal Counsel, Liechtenstein Bankers Association

### III. Executive summary

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#### 1. Introduction: overview of the legal and institutional framework of Liechtenstein in the context of implementation of the United Nations Convention against Corruption

Liechtenstein signed the United Nations Convention against Corruption on 10 December 2003, ratified it on 16 December 2009 and deposited its instrument of ratification on 8 July 2010.

The implementation by Liechtenstein of chapters III and IV of the Convention was reviewed in the fourth year of the first cycle, and the executive summary of that review was published on 30 March 2015 (CAC/COSP/IRG/I/4/1/Add.9).

Liechtenstein uses the incorporation system or monist system for the implementation of international treaties. Therefore, the Convention has become an integral part of Liechtenstein domestic law following its ratification and entry into force on 7 August 2010. Within the hierarchy of norms, the Convention as an international treaty has at least the status of statutory law in the domestic legal order and takes precedence over earlier laws (*lex posterior*).

Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis. The power of the State is embodied in the Reigning Prince and the people. Liechtenstein forms a monetary and customs union with Switzerland and therefore a variety of the laws of Switzerland apply in Liechtenstein as well. The Criminal Code (CC) and the Criminal Procedure Code (CPC) are largely based on the laws of Austria.

As a member of the European Economic Area (EEA), Liechtenstein is fully subjected to European Union (EU) legislation on the EU internal market, including the anti-money-laundering and counter-terrorist-financing framework. In particular, Liechtenstein is about to finalize the transposition of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing (known as the fourth EU anti-money-laundering directive) into national law (final parliamentary reading envisaged for May 2017; some elements of the directive have already been transposed in 2016). Additionally, Liechtenstein is party to international and multilateral organizations and agreements, including Council of Europe Committee of Experts on the

Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), a regional body in the style of a financial action task force, the Council of Europe Group of States against Corruption (GRECO), and the Egmont Group of Financial Intelligence Units. Liechtenstein has recently ratified the Council of Europe Criminal Law Convention on Corruption and the Additional Protocol thereto.

The most important institutions for the prevention and countering of corruption are the Working Group for the Prevention of Corruption, the National Police, the Financial Market Authority (FMA), the financial intelligence unit and the Office of the Public Prosecutor.

## **2. Chapter II: preventive measures**

### **2.1. Observations on the implementation of the articles under review**

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

Overall, Liechtenstein has in place a far-reaching legal and regulatory framework for all the Convention's prevention provisions, as outlined in more detail below. Liechtenstein has not adopted a single, written anti-corruption strategy. Rather, it uses the recommendations formulated in the context of the international anti-corruption peer reviews as a basis for continuously strengthening the existing framework. This approach takes into account the limited size and resources of its national administration, while ensuring that the policy decisions are based on applicable international standards.

The Working Group for the Prevention of Corruption is the main preventive anti-corruption body in Liechtenstein. The Working Group evaluates and makes proposals to amend the national framework in the light of the international recommendations. In addition, to date, it has proposed and implemented various preventive measures, including training sessions for public officials and local authorities, the elaboration of the Code of Conduct for Corruption Prevention

for public officials and the introduction of a new whistleblowing regime. The Working Group is composed of representatives of the Office for Foreign Affairs, the Anti-Corruption Police Unit, the Public Prosecutor's Office, the financial intelligence unit, the Office of Justice, the Prime Minister's Office and the Office of Human and Administrative Resources (OHAR). The Working Group is

responsible to the Government as a whole and the question of independence does not seem to pose any practical challenges because of the coordinating nature of the Group's work.

Other national bodies also play an important role in the prevention of corruption and include: the PROTEGE Working Group, which is responsible for coordinating all activities related to anti-money-laundering and counter-terrorist financing; the anti-corruption unit at the National Police; the FMA; the financial intelligence unit and the National Audit Office. All these bodies are given the necessary independence to carry out their tasks effectively and free from undue influence.

Liechtenstein has informed the Secretary-General that the Office for Foreign Affairs will be the designated prevention authority under article 6, paragraph 3 of the Convention, in view of the chairing role of the Office's Deputy Director in the Working Group for the Prevention of Corruption.

Despite its small size, Liechtenstein actively participates in various anti-corruption initiatives and programmes. It is a member of GRECO and a State party to the agreement establishing the International Anti-Corruption Academy (IACA). Liechtenstein acts as a voluntary donor of IACA, the Global Anti-Corruption Initiative of the United Nations Development Programme, Anti-Corruption Network for Eastern Europe and Central Asia of the Organization for Economic Cooperation and Development as well as the International Centre for Asset Recovery.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

The recruitment, hiring, retention, promotion and retirement of public officials is regulated by the State Personnel Act (SPA) and the State Personnel Ordinance (SPO).

In general, public advertisement of vacancies takes place on the Internet through the electronic official gazette. In addition, vacancies are also made public in the two national newspapers. For lower-ranking positions, there is a general policy of publishing vacancies first internally to allow for some rotation within the administration and to use the existing resources. However, even internal candidates have to always fulfil all the requirements prescribed for the given position, and if they fail to do so, the position is subsequently advertised publicly. Vacancies at the director (head of office) level must always be advertised publicly. There is no appeal mechanism in place for unsuccessful

candidates to challenge a hiring decision, except for cases where the candidate suspects a conflict of interest. OHAR keeps a file for every recruited official, including the disciplinary measures imposed. Public officials have competitive remuneration. Employees of the national administration are provided with training on various topics, including anti-corruption.

Upon entering service, each public official has to take an oath of office (art. 108 of the Constitution). The SPA sets out general duties of public officials (art. 37) and requires them to maintain service confidentiality (art. 38). The Criminal Code establishes an offence of violation of official secrecy (art. 310, para. 1).

Rules for recusal and disqualification of public officials when a conflict of interest arises are set out in the National Public Administration Act (in particular arts. 6, 7 and 23).

Secondary employment of public officials is permissible only if it does not interfere with the official duties (art. 40 SPA). All secondary employment must be notified to the relevant director of the office (art. 40 SPA), and some kinds of secondary employment further require the approval by the Government (as listed in art. 33 SPO).

When public officials move from public positions to the private sector, a cooling-off period of up to two years may be imposed (art. 39a SPA).

Acceptance of gifts is punishable under criminal law as passive bribery (art. 304 CC). Article 32 of SPO provides an exhaustive list of small, customary gifts which may be accepted by public officials. However, even these exceptionally permitted gifts require the approval of the supervisor.

In 2016, Liechtenstein adopted the Code of Conduct for Corruption Prevention for public officials, which includes chapters on conflicts of interest and recusal, gifts and other advantages, secondary employment, candidature for public office and an obligation to report corruption. While the Code is only an awareness-raising tool and not a disciplinary tool, it is based on the relevant provisions of SPA and SPO which provide for disciplinary measures. The disciplinary sanctions include: a warning; a written reprimand; reduction of wages; assignment of other duties; transfer; demotion; or termination of employment (art. 49 SPA).

The director of each office is responsible for monitoring compliance and addressing non-compliance with the SPO,

SPA, the National Public Administration Act and the Code of Conduct, with the support of OHAR.

Public officials have a duty to report suspected crime to their director of the office (art. 38a SPA), who is then subject to an obligation to file a report with the law enforcement authorities (art. 53 of CPC). In addition, the Code of Conduct for Corruption Prevention explicitly states that the reporting obligation may also be fulfilled by filing a report directly with the National Police in accordance with article 55 of CPC.

Criteria concerning candidature for and election to public office are set out in the People's Rights Act and the Local Authorities Act. There is no requirement for asset disclosure by candidates for public office. Candidatures by public officials for elected office must be notified to the Government, which may exceptionally prohibit the candidature if it interferes with the official duties (art. 41 SPA).

While the Working Group for the Prevention of Corruption has considered the issue of asset declarations for elected and public officials in accordance with article 8 paragraph 5 of the Convention, it concluded that public disclosure of such declarations would violate the right to privacy of the individuals concerned and their family members. However, with the implementation of the fourth EU anti-money-laundering directive, domestic public officials will be considered politically exposed persons and therefore subject to enhanced due diligence requirements. In addition, all public officials are subject to tax declarations of their worldwide income and assets.

Public funding of political parties is regulated in the Law on the Payment of Contributions to Political Parties. It provides for the public subsidization of political parties, and requires the political parties to keep records of the use of the contributions and to publish their annual financial statements. Private donations to political parties are left unregulated and do not have to be disclosed. Liechtenstein is currently in the process of considering the GRECO recommendations on the transparency of party funding and on the issue of private donations. Political parties have the status of associations and are subject to mandatory audits (art. 251b of the Persons and Companies Act).

Independence of the judiciary is established in the Constitution (art. 95). The court organization is governed by the Constitution, the Court Organization Act, the National Public Administration Act (with regard to the Administrative Court) and the Constitutional Court Act. The recruitment of judges is regulated in the Judicial Service Act and the

selection of judges is done by the Judicial Selection Commission. The courts make use of professional as well as lay judges. In addition, the first-instance judges as well as the majority of appeal judges are appointed for lifelong full-time service. Some appeal judges as well as judges at the Supreme Court and the Constitutional Court work part-time and are appointed for a limited time only. The Judicial Service Act provides for rules on the exclusion and recusal of judges in case of a conflict of interest (arts. 56 and 57), on the prohibition of gifts (art. 22), as well as on excluded activities and secondary employment (arts. 24 and 25).

The organization and functioning of the Office of the Public Prosecutor is regulated in the Prosecution Service Act (PSA). The Office is headed by the Prosecutor General and staffed by six prosecutors. All confirmed prosecutors enjoy lifelong tenure (art. 34 PSA). The PSA sets out the rights and obligations of prosecutors (arts. 36-47), and includes rules on conflicts of interest and disqualification (arts. 22-24) and gifts (art. 40). Various measures have been taken to strengthen the Office's independence, for example through prohibiting the Government to issue instructions on the non-initiation or abandonment of charges and proceedings.

#### *Public procurement and management of public finances (art. 9)*

The Department of Public Procurement is the body responsible for the overall coordination of procurement in Liechtenstein and for giving advice to contracting authorities. Procurement is regulated by the relevant EU directives, which are applicable in Liechtenstein by way of their transposition into national law, in particular the 2005 Public Procurement Act (PPA). In addition, the directly applicable EU regulations, the Convention Establishing the European Free Trade Association and the revised Agreement on Government Procurement of the World Trade Organization are also applicable.

Under the PPA, open tenders are mandatory to award contracts above the relevant *de minimis* threshold provided for in the applicable EU directives. Contracts are awarded according to the most economically advantageous tender while additional criteria, such as quality and environmental characteristics may be taken into account.

The procedures and competences for the elaboration and adoption of the national budget are set out in the Financial Budget Act. The national budget is prepared by the Government and approved by Parliament. The Government

must submit detailed annual reports on revenues and expenditures to Parliament.

In accordance with the National Audit Act, the National Audit Office is responsible for auditing the national accounts, State subsidies and payments and public procurement. The Office also examines the internal control systems of the individual public offices for their efficiency and effectiveness. If an error is found, the Office can propose corrections or take disciplinary measures, such as a warning or a termination of the work contract.

The procedures for storing official documents and access to archives are set out in the Archives Act and its corresponding ordinance.

*Public reporting; participation of society (arts. 10 and 13)*

Access to information is governed by the Public Information Act (PIA) and the Public Information Ordinance. Information is provided ex officio via official promulgation, national television, press releases and publications. In addition, anyone can request access to other official documents, which may only be withheld exceptionally if there is an overriding public or private interest (art. 3(3) PIA). If access to information is denied, appeals can be made to the Government and to the Administrative Court.

As a member of EEA, Liechtenstein complies with a range of requirements related to information technology and e-government to facilitate public access to the decision-making authorities. These are implemented through the 2010 Services Act and the 2011 eGovernment Act, which promote electronic communication and facilitate access to public authorities.

Participation of society in public decision-making processes is ensured through elections, popular initiatives and referendums. In addition, anyone may comment on draft laws during the consultation procedures within the legislative process. The relevant organizations, including NGOs, are even explicitly invited to provide comments on draft laws in the areas of their expertise. The curricula of the country's primary and secondary schools contain activities regarding ethical behaviour and anti-corruption.

Anyone can report corruption directly to the Anti-Corruption Police Unit, including through the dedicated mailbox and hotline. The Unit organizes various training and awareness-raising activities for public officials to promote the whistle-blowing regime.

### *Private sector (art. 12)*

The Persons and Companies Act (PCA) requires the registration of certain entities in the public commercial register. Liechtenstein is also considering establishing a centralized register of beneficial owners of legal entities. The PCA contains the so-called business judgment rule, according to which all actions taken for a legal entity must be free from conflict of interest and to the benefit of the company. Liechtenstein introduced corporate criminal liability in 2010.

All legal entities supervised by the FMA are subject to mandatory licensing. Auditing and accounting standards are regulated by the EU directives, the PCA and the Auditors Act. Legal entities must keep proper books and accounting, otherwise they will be subject to sanctions set out in the PCA. In addition, criminal provisions on forgery and falsification of documents (section 223 CC), aggravated fraud (section 147 CC) and deceit (section 108 CC) can also apply.

A special whistle-blowing mechanism has been established by the FMA for actual or possible violations in the field of its responsibility.

Tax deductibility of expenses that constitute bribes is not allowed (art. 47, para. 3k of the Tax Act).

### *Measures to prevent money-laundering (art. 14)*

As a member of MONEYVAL, Liechtenstein has to implement and apply all recommendations of the Financial Action Task Force and is carrying out a national risk assessment. In addition, Liechtenstein, as a member of the EEA, is currently transposing the fourth EU anti-money-laundering directive into national legislation.

Liechtenstein has a far-reaching domestic regulatory and supervisory regime for banks and non-bank financial institutions, with the Due Diligence Act (the Liechtenstein anti-money-laundering and counter-terrorist financing act) and the FMA as its cornerstones. The FMA was established in 2005 as an integrated and independent supervisory authority. The FMA is the sole supervisor in Liechtenstein and is represented in supervisory organizations at the global level (e.g. the International Organization of Securities Commissions, the International Association of Insurance Supervisors, the International Forum of Independent Audit Regulators) and the European level (e.g. the European Banking Authority, the European Securities and Markets

Authority, the European Insurance and Occupational Pensions Authority).

However, there is a certain over-reliance on private auditors to conduct

anti-money-laundering inspections which may reduce the effectiveness of those inspections and affect the quality of supervision overall. While the extensive use of private auditors allows for annual anti-money-laundering inspections of all financial institutions, which is a commendable practice, a greater number of inspections by the FMA itself seems indispensable to get sufficient insight into the conduct of the audited entities and fully understand the possible risks. The use of private auditors also creates a potential for conflicts of interest because while those auditors are approved and appointed by the FMA, they are nominated and paid for by the obligated entities, who invariably nominate their own statutory auditors.

On 1 March 2016 the revised Financial Intelligence Unit Act came into force, broadening the powers of the financial intelligence unit to request additional information from reporting entities. These powers can be equally applied when requests from foreign financial intelligence units are sent to the financial intelligence unit. The financial intelligence unit regularly exercises these powers in a timely fashion and exchanges such information internationally in line with the standards of the Egmont Group of Financial Intelligence Units either upon request or spontaneously. Obligated entities are responsible for the filing of suspicious activity reports and suspicious transaction reports. A suspicious activity report is to be filed in cases when a suspicion occurs with regard to an active customer relationship (i.e. persons, entities, funds or other assets) and not in connection with a specific transaction. Suspicious transaction reports are filed in cases where the suspicion is caused on specific transactions.

Liechtenstein has a disclosure-based regime to monitor the movement of currency and bearer-negotiable instruments across its borders (with a threshold of 10,000 Swiss francs), and a comprehensive regime covering money remitters and the electronic transfer of funds.

## **2.2. Successes and good practices**

- Liechtenstein has a well-established domestic anti-money-laundering and counter-terrorist financing regime with annual anti-money-laundering audits of financial institutions (art. 14(1)(a));

- The Liechtenstein financial intelligence unit can share internationally all information that can be collected domestically (art. 14(1)(b)).

### **2.3. Challenges in implementation**

- In the absence of an explicit anti-corruption policy, Liechtenstein is encouraged to ensure that all areas of the Convention are subject to a comprehensive and ongoing review by the Working Group for the Prevention of Corruption (art. 5(1));
- Liechtenstein is encouraged to further enhance transparency in the recruitment and promotion of public officials, including, where appropriate and possible within the limits of the national administration, through strengthening the system for the rotation of positions that are considered especially vulnerable to corruption, and extending the public advertising of vacancies (art. 7(1));
- Liechtenstein is encouraged to consider enhancing the transparency of private donations to political parties, ideally through the introduction of a threshold for publication (art. 7(3));
- Liechtenstein is recommended to continue to ensure that the use of part-time judges who are appointed for a limited time only does not compromise the integrity and independence of the judiciary at the Supreme Court and the Constitutional Court (art. 11);
- Liechtenstein is recommended to continue to consider the risks posed by, and the transparency of, trusts (art. 12);
- It is recommended that the FMA conduct a larger proportion of inspections itself and strengthen the measures to mitigate the risk of conflicts of interest in mandated audit firms, possibly by requiring that anti-money-laundering audits and statutory audits not be carried out by the same audit firm (art. 14).

## **3. Chapter V: asset recovery**

### **3.1. Observations on the implementation of the articles under review**

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

Liechtenstein has a well-established legal regime for asset recovery and has actually returned sizeable amounts of money (in excess of \$200 million in one case alone).

The mutual legal assistance framework of Liechtenstein allows for spontaneous transmission of information such as suspicious transactions or unusual payments by legal entities (art. 54a of the Mutual Legal Assistance Act).

Liechtenstein has been actively participating in the Lausanne process to develop guidelines for the efficient recovery of stolen assets and identify good practices and concrete steps in international cooperation to ensure effective procedures for freezing and returning stolen assets.

Liechtenstein is implementing the automatic exchange of tax information initiated by the Organization for Economic Cooperation and Development (OECD) as a member of the so-called early adopters group, and will begin the first automatic exchanges of financial account information from 2017.

*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

Pursuant to article 3, paragraphs 1 and 2, of the Due Diligence Act (DDA) all financial institutions as well as all designated non-financial businesses and professions are subject to the DDA and the Due Diligence Ordinance (DDO). The DDA and the DDO provide for a comprehensive know-your-customer regime and beneficial ownership transparency as well as for the identification of politically exposed persons. While currently, domestic politically exposed persons do not fall under the definition in article 2(1)(h) DDA, this issue will be addressed under the new provisions for the transposition of the fourth EU anti-money-laundering directive.

In addition to the legal requirements regarding enhanced due diligence measures set out in article 11 DDA and article 23 DDO, the FMA has published a specific guidance document (2013/1) on the application of the risk-based approach. In addition, all entities subject to due diligence are kept informed of listed persons via electronic FMA newsletter whenever the Government decides to amend the relevant sanctions lists based on United Nations Security Council resolutions. Pursuant to article 20 DDA, all entities subject to due diligence must document their compliance with the DDA and DDO requirements. For that purpose they must keep and maintain due diligence files for at least 10 years. Sanctions can be imposed for non-compliance with the legal requirements set out in the DDA and DDO.

Shell banks are defined in article 2 (1) (g) DDA. Pursuant to article 15 (4) of the Banking Act, the establishment of banks that have no physical presence and which are not affiliated with a regulated financial group are prohibited in Liechtenstein.

The Liechtenstein financial intelligence unit was established in 2001 and joined the Egmont Group of Financial Intelligence Units one year later. The operational independence of the unit is set out in article 3(2) of the Financial Intelligence Unit Act. The unit has its own budget. All its employees are public officials employed for an indefinite term. Its current Director has chaired the Istanbul Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia and also MONEYVAL. The financial intelligence unit has regularly participated in meetings held under the auspices of the Arab Forum on Asset Recovery as well as the Ukrainian Forum on Asset Recovery.

Under the revised Financial Intelligence Unit Act of 2016, the unit has broadened powers to request additional information from reporting entities. It can exchange such information freely with other members of the Egmont Group of Financial Intelligence Units without the need for a memorandum of understanding. Nevertheless, the unit has signed memorandums of understanding with 23 partner units, as those units were legally required to have a memorandum of understanding in place in order to exchange financial intelligence.

Currently, the financial intelligence unit has no powers to temporarily block the transfer of suspicious funds. However, this power will come with the transposition of the fourth EU anti-money-laundering directive.

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

Liechtenstein law treats foreign countries just like any other legal person. Therefore, foreign countries can initiate civil action and sue for compensation or damages in Liechtenstein courts. The rights of other States parties as legitimate owner of property subsequently acquired through the commission of a Convention offence are protected (arts. 20a, 20c CC and art. 354 CPC).

Liechtenstein has a comprehensive domestic legal regime for confiscation. Article 19a CC allows the confiscation of instrumentalities. Article 26 CC provides for preventive

confiscation of instrumentalities also without conviction if these objects endanger the safety of persons, morality, or the public order. The confiscation of proceeds of crime is governed by article 20 CC, with extended confiscation of proceeds of corruption explicitly provided for in article 20b (3) CC. Finally, article 356 CPC allows non-conviction-based confiscation.

Foreign court orders for confiscation, freezing and seizing can be enforced pursuant to article 64 of the Mutual Legal Assistance Act (MLAA). In practice, a domestic procedure will often be opened in parallel.

Liechtenstein can issue domestic confiscation and freezing orders without a foreign court order, on the basis of a request for mutual legal assistance or media reports. Such requests for mutual legal assistance do not need to go through diplomatic channels either.

The identification of proceeds can be done under article 98a CPC, freezing under article 97a CPC and house searches under article 92 et seq. CPC.

Liechtenstein does not require a treaty to provide cooperation for purposes of confiscation. The provisions of the MLAA apply unless otherwise provided for in international agreements. Moreover, the provisions of the Convention against Corruption are directly applicable. According to article 9 MLAA, the CPC is applicable in mutual assistance procedures. However, a request for carrying out a different procedure is granted provided that this process is compatible with the principles of the Liechtenstein criminal proceedings (art. 58 MLAA). If legal assistance is not granted in whole or in part, the foreign authority making the request will be informed by indicating the reasons. In practice, Liechtenstein applies a de minimis threshold of about 10,000 Swiss francs for freezing orders as far as assets of legal persons are concerned. Before lifting any provisional measure, consultations with the requesting State party are mandatory. The rights of bona fide third parties are protected by articles 20a and 20c CC and article 354 CPC.

#### *Return and disposal of assets (art. 57)*

Assets and objects confiscated pursuant to article 64 MLAA devolve to the State of Liechtenstein. However, the Government, pursuant to article 253a CPC, may conclude an agreement on the transfer of such assets and objects to the State where the offence was committed.

The provisions of the Convention against Corruption are directly applicable and provide a legal basis for Liechtenstein to return confiscated property to countries of origin, taking into account the rights of bona fide third parties. Moreover, article 253a CPC applies.

Although there is no legislative basis enabling the waiving of the requirement of a final judgment in the requesting State, assets can still be returned on a different basis. For example, in the Abacha case, which involved the embezzlement of funds in Nigeria, the funds were confiscated in separate in rem forfeiture proceedings. Moreover, if there is a domestic confiscation order, the money can be returned also in the absence of a foreign final judgment. Any injured party may join the criminal proceedings as a private party and may claim damages. The court may award damages in the judgment to the private party (arts. 32 to 34 CPC, arts. 257 to 270 CPC). Reasonable expenses can be deducted.

### **3.2. Successes and good practices**

- Despite its very small size, Liechtenstein has been actively engaged in the development and promotion of international cooperation in order to combat money-laundering and return stolen assets (art. 51);
- Liechtenstein has issued domestic freezing orders without a foreign court order, on the basis of a request for mutual legal assistance or media reports. Such requests do not need to go through diplomatic channels. Before lifting any provisional measure, consultations with the requesting State party are mandatory (arts. 54(2)(a), 55(8));
- In the Abacha case, the Convention was used as the legal basis for cooperation with the requesting State, Nigeria (art. 55(6)).

### **3.3. Challenges in implementation**

- Liechtenstein is encouraged to finalize the transposition of the fourth EU anti-money-laundering directive (2015/849) to address the existing gaps in its anti-money-laundering/counter-terrorist financing legislation on domestic politically exposed persons and beneficial ownership registers.

## IV. Implementation of the Convention

### A. Ratification of the Convention

The Principality of Liechtenstein signed the United Nations Convention against Corruption on 10 December 2003, ratified it on 16 December 2009 and deposited its instrument of ratification on 8 July 2010.

Following approval of ratification by the Government and the consent expressed by Parliament, a period of 30 days had to be respected during which a referendum on the Convention could have been launched. After that deadline the instrument of ratification had to be signed by the Hereditary Prince on behalf of the Reigning Prince and countersigned by the Prime Minister.

Liechtenstein uses the incorporation system or monist system for the implementation of international treaties. Therefore, the Convention has become an integral part of Liechtenstein's domestic law following its ratification and entry into force on 7 August 2010. Within the hierarchy of norms, the Convention as an international treaty has at least the status of statutory law in the domestic legal order and takes precedence over earlier laws (*lex posterior*).

### B. Legal system of Liechtenstein

The Principality of Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis. The power of the State is embodied in the Reigning Prince and the People. The relatively strong position of the Reigning Prince is balanced by the far-reaching direct-democratic rights of the People.

According to the Constitution, Liechtenstein is a union of the two regions of Vaduz (Oberland, Upper Country) and Schellenberg (Unterland, Lower Country). The Oberland consists of six municipalities, including the capital Vaduz, and the Unterland consists of five municipalities.

In the dualistic system of State in the Principality of Liechtenstein, the power of State is embodied in both the Reigning Prince and the People. Separation of powers is further secured by the vesting of separate rights in the executive (Government), legislative (Parliament) and judicial (courts) branches.

The Reigning Prince is the Head of State and represents the State in all its relations with foreign countries, without prejudice to the requisite participation of the responsible Government. On the recommendation of Parliament, the Reigning Prince appoints the members of the Government. The Reigning Prince is also responsible for the formal appointment of judges; the election of judges is carried out by Parliament on the recommendation of a body for the selection of judges. When justified on substantial grounds, the Reigning Prince may dissolve Parliament and dismiss the Government. The Reigning Prince also has the right to issue emergency decrees as well as the right of pardon, of mitigating sentences, and of quashing criminal investigations. Every law requires the sanction of the Reigning Prince and countersignature by the Prime Minister

to attain legal effect; when exercising their powers in this regard, both the Reigning Prince and the Prime Minister are bound by the provisions of the Constitution.

The Liechtenstein Parliament consists of 25 members. They are elected every four years in universal, equal, direct and secret elections according to the system of proportional representation. The most important responsibilities of Parliament are participation in the legislative process, assent to international treaties, approval of the State's financial resources, election of judges on the proposal of the body for the selection of judges, and oversight of the State administration. Parliament elects the Government and proposes it to the Reigning Prince for appointment. Parliament may also initiate dismissal of the Government or one of its members if either loses its confidence. Parliament has a quorum when at least two thirds of the members are present.

Elections take place in two electoral districts; the Oberland and the Unterland each constitute an electoral district. All citizens aged 18 and older whose normal residence is in Liechtenstein have the right to vote. The Oberland has 15 seats in Parliament, and the Unterland has 10 seats. Only persons included on the list of an electoral group may be elected. For an electoral group to be eligible for a seat in Parliament, it must achieve at least 8% of all valid votes cast nationwide. There are currently four political parties represented in Parliament.

The Government is a collegial body consisting of five members: the Prime Minister, the Deputy Prime Minister, and three additional Ministers. Currently, the Prime Minister and two other Ministers are from the Progressive Citizen's Party, while the Deputy Prime Minister and another Minister are members of the Patriotic Union. In this legislative term, the Government consists of three men and two women.

The Government members are appointed by the Reigning Prince on the proposal of Parliament. The Government is the supreme executive body, to which 34 Government offices and units as well as eight diplomatic representations abroad are subordinate. The Government has the power to enact ordinances and is thus also a rule-making body. Ordinances may only be enacted on the basis of laws and international treaties, however.

Every enactment and amendment of constitutional and legislative provisions begins with an initiative. In Liechtenstein, the right of initiative is granted to the Reigning Prince (in the form of Government proposals), Parliament, and eligible voters. Without the participation of Parliament, no law may enter into force in Liechtenstein or be declared valid. Similarly, a law requires the assent of the Reigning Prince to become valid.

In the vast majority of cases, the initiative for the enactment or amendment of constitutional provisions and laws originates with the Government. Generally, the competent ministry prepares a draft law. The draft is then circulated for consultations. For this purpose, the Government publicly circulates the law for comments. Target groups are specially invited to comment who have or might have a special interest in the proposal. Not only those invited to comment may in fact comment, however. In principle, any person or organization with an interest in the proposal may submit comments. The draft law is then revised, and the comments received are taken into account to the extent possible. The modified draft is then adopted by the Government and presented to Parliament for consideration. Parliament may accept, change, or reject the draft law. For this purpose, two readings and a final vote are held in Parliament. If Parliament adopts a law, the decision is subject to a facultative referendum for a period

of 30 days. If 1,000 signatures of eligible voters are collected against the decision by Parliament, a popular vote must be held. This applies not only to laws, but also to financial decisions of Parliament. In the case of constitutional decisions, 1,500 signatures are required for a popular vote.

In addition to the Government, Liechtenstein citizens have the right of initiative. 1,000 eligible voters may submit a legislative initiative in the form of a precisely formulated draft or a general suggestion. Parliament must then consider the initiative in its next session. It may accept or reject a formulated initiative. If Parliament does not adopt a formulated initiative, a popular vote must be held. If Parliament accepts a simple suggestion, it implements the suggestion by enacting, repealing or amending a law.

A popular initiative may also concern a partial or total revision of the Constitution, if 1,500 signatures are gathered. Also in this case, Parliament may either accept or reject the initiative and hold a popular vote. Of special note is the referendum on international treaties. Every decision of Parliament concerning assent to an international treaty is subject to a popular vote, if Parliament so decides or if 1,500 eligible voters or four municipalities demand a vote within 30 days.

Municipal autonomy plays an important role in Liechtenstein. Within their own sphere of competence, the municipal authorities autonomously carry out the business that arises and administer the municipal assets. Citizens have the option of calling a referendum against any decision. As at the national level, the People also have the option of initiative.

Eligible voters in each municipality elect a Municipal Council presided by a Mayor, who carries out his or her function full-time or part-time, depending on the size of the municipality. Elections for Municipal Council and Mayor take place simultaneously in all municipalities every four years. Votes at the municipal level may be held on a variety of issues. Specifically, they may concern changes to municipal regulations, financing of infrastructure projects, or the naturalization of foreigners.

The importance of municipalities is also manifested by the fact that every municipality has the constitutional right to secede from Liechtenstein.

Ordinary jurisdiction is distinguished from jurisdiction under public law. Ordinary jurisdiction covers the administration of justice in civil and criminal matters. The Court of Justice, the Court of Appeal and the Supreme Court constitute the three instances.

Jurisdiction under public law is exercised by the Administrative Court and the Constitutional Court. The Administrative Court is the appellate body for decisions and decrees of the Government or commissions acting on its behalf. The Constitutional Court has jurisdiction on constitutional questions.

The Court of Justice is the first instance in civil and criminal matters. Cases before the Court of Justice may, depending on the matter, be heard by individual judges or by a panel of judges. The Criminal Court and the Juvenile Court hear cases as panels. In civil matters and in the case of infractions, individual judges decide the case. The Criminal Court decides all cases involving crimes as well as certain misdemeanours exhaustively enumerated by law. The Juvenile Court has jurisdiction over perpetrators between 14 and 18 years of age.

The second instance of ordinary jurisdiction in Liechtenstein is the Court of Appeal, to which appeals against judgments or decisions of the Court of Justice may be addressed. Judgments at the Court of Appeal are issued by Senates or by the President of the

Senate. A Senate is composed of one full-time President of the Senate, one full-time associate judge and one part-time appellate judge-. In total, there are three Senates and thus three full-time Presidents of the Senates.

Appeals against judgments or decisions of the Court of Appeal may be lodged with the third and last instance, the Supreme Court. As in the case of the Court of Appeal, justice is administered by Senates or by Presidents of the Senates. There are two Senates composed of one full-time President of the Senate and four part-time Supreme Court judges each.

The Administrative Court, as a court of public law, is responsible for appeals against decrees and decisions of the Government or commissions acting on its behalf, and it is also the last instance in appellate proceedings against administrative acts. It consists of five judges and five alternate judges. The judges serve part-time and are appointed for a five-year renewable term.

The Constitutional Court is a court of public law that is autonomous and independent in relation to other constitutional bodies. Its responsibilities include the protection of constitutionally guaranteed rights, including protection of individual rights guaranteed by international agreements. Other responsibilities include review of the constitutionality of laws and international treaties as well as review of the conformity of ordinances with the Constitution, laws, and international treaties. Moreover, the Constitutional Court decides on conflicts of jurisdiction among courts and administrative bodies, and it is responsible for the consideration of election complaints and indictments of Ministers. The Constitutional Court is composed of five judges. The judges serve part-time and are appointed for a five-year renewable term.

While the Office of the Public Prosecutor formally reports to the Government, the Government may, pursuant to the Prosecution Service Act, only issue very limited instructions to the Prosecutor-General's Office. The responsibility of the Prosecutor-General's Office is to investigate criminal offences and to represent public charges in court. Currently, Liechtenstein has one Prosecutor-General and six other prosecutors.

The secretariat has been provided with:

- a) a list of all legislative acts referred to in the self-assessment, including a hyperlink to their German version;
- b) an English translation of the full text of a number of those acts.

The information was compiled in close cooperation with the consulted institutions and approved by the Government.

Liechtenstein listed the following three practices that it considers to be good practices in the implementation of the chapters of the Convention that are under review:

- 1) In order to prevent the laundering of corruption proceeds, all Designated Nonfinancial Businesses and Professions (*DNFBP*), as specified by the Financial Action Task Force (*FATF*) Recommendations, are subject to the Due Diligence Act. Therefore, all due diligence obligations applicable to financial institutions also extend to DNFBPs.
- 2) Liechtenstein has a robust system of domestic cooperation. The creation of the PROTEGE working group is an important step in consolidating the long-standing work of organising a coordinated Anti-Money Laundering/Counter-Terrorism Financing

(*AML/CFT*) regime, addressing operational cooperation issues and preparing for the implementation of the new standards. PROTEGE is chaired by the Financial Investigations Unit and consists of the major AML/CFT stakeholders, together with representatives of the relevant associations from the private sector, including the national risk assessment.

3) A strong point in the Liechtenstein AML/CFT system is its focus on asset recovery. Besides criminal confiscation, the Liechtenstein regime also features a civil forfeiture procedure that is systematically used to significant effect for foreign predicate proceeds, taking priority over criminal convictions. The civil in rem confiscation procedure is a powerful and effective tool in a criminal policy system where the predicate offence has taken place abroad and so is therefore reliant on foreign investigations and prosecutions.

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## C. Implementation of selected articles

### Chapter II. Preventive measures

#### Article 5. Preventive anti-corruption policies and practices

##### *Paragraph 1 of article 5*

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.*

##### *(a) Summary of information relevant to reviewing the implementation of the article*

In view of the signing conference for the Convention, the Liechtenstein Government, through a Government decision, appointed in July 2003 an Anti-Corruption Working Group under the lead of the Office for Foreign Affairs, and involving the Ministries of General Government Affairs and Justice, the Office of the Public Prosecutor, the National Police and the Financial Intelligence Unit. The mandate of the Working Group was twofold: 1) to prepare recommendations on possible steps relating to the Convention and the Council of Europe's Civil Law and Criminal Law Conventions on Corruption; and 2) to propose practical measures to combat corruption at the national level, especially by including preventive measures in the context of ongoing projects.

On the basis of a thorough analysis of the provisions of the Convention, the Working Group, pursuant to the first part of its mandate, recommended in November 2003 to the Government that Liechtenstein sign the Convention at the signing conference in Merida. The signature occurred on 10 December 2003. After the conclusion of several projects in view of the implementation of the Convention, the Working Group recommended in 2009 to the Government that Liechtenstein ratify the Convention. In addition, it recommended that Liechtenstein sign the Criminal Law Convention on Corruption of the Council of Europe and that it join the latter's Group of States against Corruption (*GRECO*). In November 2009, Liechtenstein signed the Council of Europe's Criminal Law Convention on Corruption and in January 2010 it joined GRECO. In July 2010, Liechtenstein deposited its instrument of ratification of the Convention.

In respect of the second part of its mandate, the Working Group initiated several projects and/or proposed preventive measures in the context of ongoing projects. In 2004, a survey among the offices of the National Administration was carried out in order to identify areas and activities with an increased risk of corruption and to assess the existing safeguard measures to minimize such risk. The result of the survey showed that the risk of corruption was considered to be low. At the same time the survey contributed to raising awareness among public officials of potential corruption risks, thereby contributing to corruption prevention. Also in 2004, the Working Group

proposed measures aimed at preventing conflicts of interest and other corruption risks in the framework of the establishment of the independent Financial Market Authority (*FMA*). Other activities of the Working Group concerned the establishment of a specialized Anti-Corruption Unit (*ACU*) at the National Police, the introduction of a system for the protection of witnesses, the provisions in the State Personnel Act on the acceptance of gifts, on the avoidance of conflicts of interest and on secondary activities of public officials, as well as an assessment of the legal situation with regard to corruption in the private sector. It also organised a number of awareness-raising events, inter alia, with the involvement of the Liechtenstein Development Service (on the integration of anti-corruption policies in its development cooperation activities) and Transparency International Switzerland (on corruption prevention in the private sector).

In May 2010, the Working Group's mandate was modified in order to enable it to follow-up, prepare, propose and possibly implement concrete measures required under recommendations addressed to Liechtenstein as a party to the Convention and a member of GRECO. This modification assigned to the Working Group a more permanent role of interaction with international bodies in order to prepare policy decisions which would reflect the international policy framework.

As in other national policy fields, such as its human rights policy, Liechtenstein uses its reporting obligations under international anti-corruption treaties as a mechanism to have the relevant national situation regularly assessed by experts who formulate specific recommendations which form the basis for continuously developing and implementing the national policy in that field. This approach takes into account the limited resources and specialized expertise of its National Administration, while ensuring that the policy decisions are based on applicable international standards. For example, for the implementation of the recommendations addressed to Liechtenstein under the first, second and third GRECO evaluation cycle, the Working Group was involved in several concrete legislative changes to the national legal framework. These concerned, inter alia:

- the introduction of witness protection (amendments to the Criminal Procedure Code and the Police Act);
- the introduction of whistle-blowing policies (amendments to the State Personnel Act);
- the criminalization of active and passive bribery in the private sector and the applicability of the new regime on liability of legal persons to all private sector bribery offences in their active form (amendments to the Criminal Code); and
- enhanced supervision of trustees and trust companies (amendments to the Professional Trustees Act).

In response to the recommendations issued in the context of the first cycle of the Implementation Review Mechanism under the Convention against Corruption, the Working Group suggested the revision of several anti-corruption provisions in the Criminal Code.

In February 2013, the Government decided to enhance the active role of the Anti-Corruption Working Group by providing it with a new name reflecting the focus of its new mandate and with an extended composition. The “Working Group for the Prevention of Corruption” (*Working Group*) has as its primary task to “propose and, as appropriate, implement measures for the prevention of corruption and for raising public awareness of the various dimensions of corruption in national and local administration

as well as in the private sector.” The Working Group continues to be mandated to devise preventive measures to be included in existing projects. Reference points for such measures are the Convention against Corruption and the Council of Europe’s Criminal Law Convention on Corruption as well as the “case law” of the respective monitoring mechanisms. In its new composition, the Working Group is made up of representatives of:

- the Prime Minister’s Office (which is responsible for all staff matters of the National Administration);
- the National Police (the Head of the Anti-Corruption Unit);
- the Office of the Public Prosecutor;
- the Financial Intelligence Unit;
- the Office of Justice;
- the Office for Foreign Affairs; and
- the Office of Human and Administrative Resources (which implements the Government’s staff policy, including in the areas of recruitment and training).

In addition, the Working Group has the explicit competence to invite other experts of the National Administration, the local authorities, the private sector, academia and international organisations to its meetings, thereby focussing its deliberations on particular aspects of corruption prevention in different areas.

Among the first activities undertaken by the Working Group in the fulfilment of its new mandate was the elaboration of a Code of Conduct on Corruption Prevention for public officials (see information regarding article 8 of the Convention). The Working Group has also prepared a report on the introduction of a “whistleblowing” regime which resulted in a revision of the State Personnel Act (see information regarding article 8 of the Convention).

It should be noted that the Working Group is only one of the several national bodies actively involved in the prevention of corruption in Liechtenstein. Other bodies actively involved in this area include:

- the Anti-Corruption Unit;
- the Financial Intelligence Unit;
- the Financial Market Authority;
- the PROTEGE Working Group; and
- the National Audit Office.

For more information on other bodies involved in preventing corruption, please refer to the response under article 6 of the Convention.

### *(b) Observations on the implementation of the article*

Liechtenstein has not adopted a single, written anti-corruption policy. Rather, Liechtenstein uses its international reporting obligations as a mechanism to regularly assess the national situation, and uses the recommendations formulated in the context of the international anti-corruption peer reviews as a basis for continuously developing and implementing the national anti-corruption policy. The Working Group acts as the coordinating body responsible for proposing concrete measures to implement the recommendations issued to Liechtenstein. This approach takes into account the limited resources and specialized expertise of Liechtenstein’s National Administration, while ensuring that the policy decisions are based on applicable international standards.

In addition, the mandate of the Working Group goes beyond the implementation of international recommendations. The Working Group has been active in proposing concrete preventive anti-corruption measures, such as the elaboration of a Code of Conduct on Corruption Prevention for public officials and the introduction of a new whistleblowing regime.

Overall, Liechtenstein has in place a comprehensive legal and regulatory framework for all of the Convention's prevention provisions, as outlined in more detail under respective provisions of the Convention.

It was concluded that Liechtenstein is largely in compliance with its obligations under this provision of the Convention. However, in the absence of an explicit anti-corruption policy, Liechtenstein is encouraged to ensure that all areas of the Convention are subject to a comprehensive and ongoing review by the Working Group for the Prevention of Corruption.

### *(c) Challenges in implementation*

In the absence of an explicit anti-corruption policy, Liechtenstein is **encouraged** to ensure that all areas of the Convention are subject to a comprehensive and ongoing review by the Working Group for the Prevention of Corruption.

### *Paragraph 2 of article 5*

*2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

In the framework of its mandate, the Working Group has initiated numerous preventive anti-corruption measures. These include, inter alia:

- the establishment of the Anti-Corruption Unit to which suspicions of corruption may be directly reported;
- the introduction of a whistle-blowing regime within the National Administration;
- the adoption of the Code of Conduct;
- the introduction of a requirement for candidates for positions in the National Administration with an increased level of trustworthiness (e.g. with access to sensitive data, with decision-making power in areas of potentially wide-ranging consequences) to submit an extract from the criminal register with their application.

Members of the Working Group (namely the Head of the Anti-Corruption Unit and the Deputy Prosecutor-General) have been carrying out awareness-raising and training activities for several offices of the National Administration as well as for a number of municipal councils and local authorities. The training sessions generally consist of a presentation of the legal and administrative framework for corruption prevention as well as practical examples, followed by discussions regarding potential corruption risks in the daily business of the particular audience. To date, about 200 out of 900 staff of the

National Administration have undergone the training, namely: all police officers and auxiliary police; directors of all offices of the National Administration; the Financial Market Authority; the Data Protection Agency; the Office for Public Construction and Infrastructure; and the Food and Veterinary Office. While no formal evaluation of the awareness raising activities' impact has been undertaken, the rise in cases reported to the specialized Anti-Corruption Police Unit from within the police itself concerning integrity problems (such as unjustified access to police databases) can be seen as a result of such awareness-raising efforts.

With regard to the involvement of the private sector in the awareness-raising activities, the private sector has thus far been represented by the HILTI corporation in an awareness-raising event on the integration of anti-corruption policies in Liechtenstein's development cooperation activities as well through the involvement of the HILTI Chief Compliance Officer and the Director of the Liechtenstein Bankers Association in the on-site visit of the Convention evaluators during the first review cycle.

With regard to measures to prevent the laundering of funds derived from corruption (i.e. measures to prevent corruption at an international level), please see the information provided regarding articles 14, 52 and 58 of the Convention.

#### *(b) Observations on the implementation of the article*

The Working Group has initiated numerous anti-corruption measures and carries out various awareness-raising activities, including training sessions for public officials.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

#### *Paragraph 3 of article 5*

*3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

In accordance with the mandate of the Working Group, two of its members (from the Office of Justice and the Office of the Public Prosecutor) have been in charge of the evaluation of the relevant provisions of Liechtenstein's Criminal Code in view of the ratification of the Council of Europe's Criminal Law Convention on Corruption. This assessment led to the revision of the Criminal Code which entered into force on 1 June 2016. Similar assessments had been carried out on specific subjects, such as the liability of legal persons, in the framework of the evaluation of the legal situation against the requirements of the Convention in the preparation of the ratification mentioned above. Please find the consultation report on the revision of the Criminal Code and other acts to update the anti-corruption regime under [http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht\\_1.pdf](http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht_1.pdf)

Members of the Working Group are currently evaluating the legal framework on the

financing of political parties against the background of relevant recommendations addressed to Liechtenstein by GRECO.

There is no general evaluation of legal instruments in place with a special focus on corruption prevention. However, the responsibilities of the Constitutional Court include the review of the conformity of ordinances with the Constitution, laws and international treaties.

#### *(b) Observations on the implementation of the article*

The Working Group evaluates national anti-corruption legislation in light of the recommendations addressed to Liechtenstein in the framework of the international anti-corruption review mechanisms.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

#### *Paragraph 4 of article 5*

*4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

Liechtenstein has been a member of the GRECO since 2010, a State party to the agreement establishing the International Anti-Corruption Academy (IACA) and a voluntary donor of IACA since 2011. Liechtenstein has also been a regular donor to the UNDP Global Anti-Corruption Initiative (GAIN) and the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN).

As a member of GRECO, Liechtenstein has so far provided a country rapporteur for the compliance procedure under the third evaluation round in respect of Azerbaijan as well as for the compliance procedure under the fourth evaluation round in respect of Norway. With regard to the collaboration with United Nations Development Programme, a recent high-level event at UN headquarters in New York, chaired by Liechtenstein, on the integration of anti-corruption policies in national development programmes can be mentioned: <https://twitter.com/LiechtensteinUN/status/779422845638172676>.

In respect of measures to prevent the laundering of funds derived from corruption (i.e. measures to prevent corruption at an international level), please refer to the information provided regarding articles 14, 52 and 58 of the Convention.

Please find further information on the activities of GRECO, IACA and ACN under:

GRECO: [http://www.coe.int/t/dghl/monitoring/greco/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/default_en.asp)

IACA: <http://iaca.int/>

ACN: <http://www.oecd.org/corruption/acn/>

*(b) Observations on the implementation of the article*

Despite its small size, Liechtenstein actively participates in various international anti-corruption initiatives, projects and programmes.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## Article 6. Preventive anti-corruption body or bodies

*Paragraph 1 of article 6*

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:*

- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;*
- (b) Increasing and disseminating knowledge about the prevention of corruption.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Various national bodies play a role in the prevention of corruption in Liechtenstein, namely:

### **Working Group for the Prevention of Corruption**

The mandate of the Working Group is focussed on the coordination and oversight of the implementation of preventive measures decided by the Government and on the dissemination of knowledge about the prevention of corruption through training activities (see also information regarding article 5 of the Convention).

The work schedule and priorities of the Working Group are based on the recommendations which are being addressed to Liechtenstein in the framework of international anti-corruption review mechanisms and the respective timeframes. The mandate of the Working Group has been defined in several Government decisions, the latest one adopted in February 2013 (RA 2013/197, which states:

The working group on "combating corruption" is renamed working group on "corruption prevention" and is now composed as follows:

- Deputy Director, Office for Foreign Affairs (chair)
- Deputy Director, Financial Intelligence Unit
- Head of Criminal Police
- Deputy Prosecutor General

- Senior advisor to the Prime Minister
- Officer of the Office of Justice
- Officer of the Office for Human Resources and Organisational Matters.

The Working Group may invite representatives and experts from the national administration, municipalities, industry, associations, universities and international organizations to its meetings.

- 2) The Working Group is mandated to propose and implement, as the case may be, measures for the prevention of corruption and public awareness that address the different dimensions of corruption at the national and local level and in the private sector.
- 3) The Working Group shall be responsible in addition to draw up measures to implement the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption and its Additional Protocol.
- 4) The Working Group supports the review of the implementation of the agreements mentioned under paragraph 3 by international organizations.
- 5) The Working Group shall also focus on the aspects of corruption prevention in connection with ongoing projects and public consultations.

Apart from the coordinated work of the Working Group, each of the bodies involved in the Group also plays an individual role in the prevention of corruption, such as:

*Office for Foreign Affairs:* knowledge of Liechtenstein's international obligations in the area of anti-corruption; participation in relevant review mechanisms; in charge of multilateral development cooperation (with good governance as one of its priorities).

*Office of the Public Prosecutor:* prosecution of corruption offences (including the laundering of corruption proceeds); participation in development of legislative proposals regarding the Criminal Code and the Criminal Procedure Code; in charge of training activities, in particular with respect to the criminal law framework of anti-corruption (together with the head of the Criminal Police).

*Office of Justice:* development of legislative proposals; central authority for mutual legal assistance.

*Office of Human and Administrative Resources:* development of legislative proposals; in charge of implementing the Government's staff policy, including in the areas of recruitment and general training.

*National Police:* important actor for the whistleblowing regime (Anti-Corruption Unit); law enforcement; in charge of anti-corruption training as an important tool for awareness-raising.

*Financial Intelligence Unit:* central actor in the field of financial due diligence to deter the abuse of the financial centre for the laundering of corruption proceeds.

The Working Group has the explicit competence to invite other experts of the National Administration, the local authorities, the private sector, academia and international organisations to its meetings, thereby focusing its deliberations on particular aspects of corruption prevention in different areas. It did so, for instance, in the evaluation of measures to be taken for the implementation of GRECO recommendations with regard to the financing of political parties. Those discussions are also attended by representatives of the Financial Affairs Unit and the National Audit Office.

## **PROTEGE Working Group**

In 2013, Liechtenstein established the working group PROTEGE to address the issues of money-laundering and terrorist financing. The group is chaired by the Financial Intelligence Unit, with the participation of the Financial Market Authority, National Police, Office of the Public Prosecutor, Office of Justice, Office for International Financial Affairs, Foreign Office, Courts and Tax Administration. The working group addresses operational cooperation issues, identifies existing gaps, risks and trends, and prepares for the implementation of the new standards.

### **National Police (Anti-Corruption Unit)**

The Anti-Corruption Unit is part of the Crime Investigations Division (CID) at the National Police. It consists of three members, namely the Head of the Unit (who is also the Head of the CID) and two dedicated police officers.

The Anti-Corruption Unit investigates corruption cases and plays a key role in the whistleblowing regime as it maintains the reporting hotline and mailbox and acts upon the reports received. The Head (together with the Deputy Prosecutor-General) is also responsible for carrying out awareness-raising and training activities for several offices of the National Administration (including police officers) as well as for a number of municipal councils and local authorities.

The activities of the National Police, including those of the Anti-Corruption Unit, are reflected in the annual report of the National Police. Further information on the Unit may be obtained by contacting the Head of the CID.

### **Financial Market Authority (FMA)**

The Financial Market Authority (*FMA*) was established in 2005 with the entry into force of the Financial Market Authority Act. With a view to ensuring the stability of the financial institutions and the financial market, the FMA is responsible for supervising all financial market participants, including all banking, insurance, asset management companies, investment undertakings, pension schemes, pension funds, and other financial intermediaries (professional trustees, auditors, lawyers, patent attorneys, exchange offices, real estate brokers, traders in valuable goods, auctioneers, and other persons subject to due diligence). The FMA is responsible for granting and withdrawing licences for engaging in such professional activities. The FMA ensures implementation of international standards and participates in the preparation of financial market laws on behalf of the government. To further specify laws and their implementing ordinances, the FMA also issues guidelines and communications.

The FMA interacts with the Working Group. For example, the FMA representatives have been involved in anti-corruption reviews by GRECO as well as in the framework of the Convention (see also response under articles 14 and 52 of the Convention ).

For further information, please refer to: <https://www.fma-li.li/en/>. Please find the 2016 annual report of the FMA here: <https://www.fma-li.li/files/fma/fma-geschaeftsbericht-2016-en.pdf>

### **Financial Intelligence Unit (FIU)**

The Financial Intelligence Unit (*FIU*) is administrative and has no investigating powers. It is the central office for obtaining and analysing information necessary to identify money laundering, predicate offences for money laundering, organised crime, and terrorist financing. It is responsible for receiving suspicious activity reports submitted by financial intermediaries and, where appropriate, it forwards these to the Office of the Public Prosecutor. It has two departments, operational and strategic analysis, and has designated staff for international affairs. The Head of the FIU chairs the PROTEGE working group (see also response under articles 14, 52 and 58 of the Convention).

For further information, please refer to: <http://www.fiu.li/index.php/en/>. Please find the 2015 annual report of the FIU here: [http://www.fiu.li/images/GzD\\_FIU\\_Jahresbericht\\_2015\\_EN.pdf](http://www.fiu.li/images/GzD_FIU_Jahresbericht_2015_EN.pdf)

### **The National Audit Office (NAO)**

The National Audit Office (*NAO*) is the central institution responsible for the supervision of National Administration and is attached to the Parliament. The responsibilities of the NAO include: a) auditing the national accounts; b) auditing the financial conduct and accounting of the offices of the national administration, the Data Protection Office, the Secretariat of Parliament, the courts (to the extent financial supervision extends solely to the administration of justice), and public enterprises (to the extent provided by special laws); c) auditing State financial support (subsidies) and payments, including service agreements; d) auditing public procurement; e) auditing the internal control system with respect to cost-efficiency and effectiveness; and f) auditing IT systems with respect to security, cost-efficiency and functionality. Audits carried out by the NAO take into account both legality checks and cost-effectiveness assessments. The Control Committee of the Parliament or the Government may mandate the NAO to carry out special audits and inquiries. The NAO decides in accordance with its regular audit programme whether to accept or reject the mandate.

The NAO has also been involved in some activities of the Working Group.

#### *(b) Observations on the implementation of the article*

There is a range of bodies in Liechtenstein involved in the prevention of corruption, including the Working Group for the Prevention of Corruption, the PROTEGE Working Group, the Anti-Corruption Police Unit, the FMA, the FIU and the NAO.

Owing to regular meetings and other direct contacts, coordination among the authorities is very effective and operates smoothly.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

#### *Paragraph 2 of article 6*

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized

*staff, as well as the training that such staff may require to carry out their functions, should be provided.*

*(a) Summary of information relevant to reviewing the implementation of the article*

With regard to the independence and effectiveness of the work of the bodies referred to under paragraph 1, the following could be noted:

**Working Group for the Prevention of Corruption**

The Working Group for the Prevention of Corruption has been established by and is responsible to the Government as a whole, thereby ensuring the necessary independence towards individual ministries. Given the specific role of the Working Group in implementing the international recommendations and carrying out awareness-raising activities, the work of the Working Group can be carried out independently and effectively, not least because of its relatively broad and varied composition.

**National Police (Anti-Corruption Unit)**

The Anti-Corruption Unit is part of the Criminal Investigations Division (CID) of the National Police. The Head of the CID acts also as a Head of the Anti-Corruption Unit. In addition to the Head, two other public officials work for the Unit. Their recruitment is governed by the regular recruitment procedure for public officials under the State Personnel Act. The Head is appointed by the Government. No rotation policy is in place. The Unit is provided with sufficient independence to carry out investigations and awareness-raising activities.

**Financial Market Authority (FMA)**

The FMA is an autonomous authority with its own legal personality and supervises all financial intermediaries. The FMA has sufficient human, financial and technical resources to independently fulfil its supervisory tasks.

**Financial Intelligence Unit (FIU)**

The FIU is operationally fully independent and there is no interference with its analysis and dissemination of information.

**National Audit Office (NAO)**

The new National Audit Act, entered into force on 1 January 2010. The goal of the reform was in particular to strengthen the NAO by attaching it to the Parliament (as opposed to the Government until then). The NAO carries out its duties autonomously and enjoys particular guarantees of independence (such as the appointment of its director by Parliament for a renewable 8-year term). It defines an annual audit plan and communicates it to the Government after consulting the Control Committee of Parliament.

*(b) Observations on the implementation of the article*

During the country visit, the question of independence of Liechtenstein's bodies involved in the prevention of corruption was discussed in detail. In particular, the reviewing States questioned the independence of the Working Group for the Prevention of Corruption given that its members are representatives of various governmental ministries. The reviewing experts were satisfied with Liechtenstein's explanation that the Working Group only plays a coordination and policy development role, in particular through proposing ways to implement international recommendations issued to Liechtenstein, and the question of independence therefore does not pose any practical challenges. The Working Group has been key in ensuring Liechtenstein's compliance with the international standards, and has never been subject to any undue influence in this regard.

The reviewing experts were also satisfied with the level of independence and effectiveness of other bodies involved in the prevention of corruption. In particular, the FIU and the FMA enjoy full independence and are not subject to any governmental directions.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 3 of article 6*

*3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Due to its tasks in chairing the Working Group as well as heading the Liechtenstein delegation to GRECO, the Office for Foreign Affairs has been notified to the UN Secretary General as Liechtenstein's Prevention Authority.

The Financial Intelligence Unit has been notified as the Asset Recovery Focal Point for Liechtenstein.

*(b) Observations on the implementation of the article*

Liechtenstein has informed the Secretary-General that the Office for Foreign Affairs acts as its designated prevention authority under article 6 paragraph 3. Full contact details of the Office are available in UNODC's Online Directory of Competent National Authorities.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## Article 7. Public sector

### *Paragraph 1 of article 7*

*1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:*

*(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;*

*(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;*

*(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;*

*(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

The recruitment, hiring, retention, promotion and retirement of civil servants at the national level is regulated by the State Personnel Act (**SPA**), and the corresponding Government Ordinance, the State Personnel Ordinance (**SPO**). In accordance with the Constitution and on the basis of the Local Authorities Act (**LAA**), the municipalities are competent to regulate these subject-matters independently at the local level.

In general, public advertisement of vacancies takes place on the Internet through the electronic official gazette. In addition, vacancies are also made public in the two national newspapers.

For lower-ranking positions, there is a general policy of publishing vacancies first internally to allow for some rotation within the Administration and to use the existing resources. However, even internal candidates have to always fulfil all the requirements prescribed for the given position, and if they fail to do so, the position is subsequently advertised publicly. Vacancies at the director (head of office) level must be always advertised publicly.

The terms of the employment and the professional qualifications sought are agreed between the Office of Human and Administrative Resources (**OHAR**) and the Office with the vacancy. The hiring procedure consists of four main stages:

- 1) Review of applications after the deadline for submission by the OHAR in view of the establishment of a short list.
- 2) Interviews with the short-listed candidates by the OHAR and the director of the

Office with the vacancy in view of the establishment of a single proposal for the Government.

3) Decision by the Government to hire a certain individual on the basis of the conditions attached to the proposal.

4) Signing of the employment contract with those conditions by the candidate.

The recruitment procedure differs depending on the grade level of the position advertised. There is a 20-grade level structure in Liechtenstein. For levels 1-11, the final decision for recruitment is made by OHAR and the hiring Office; for levels 12-20, the whole Government must give its approval. In addition, for levels 12-20, stricter rules apply for record-keeping for interviews. Please find here a recent example of a public announcement for a vacancy in the National Administration (the same announcement has also been published in the two national newspapers): <https://apps.llv.li/amtsblatt/kundmachung/rubrik/STE>

There is no general screening of candidates for employment in the National Administration. The standard documentation used for applications in Liechtenstein includes two recommendations from former employers / trainers who may be contacted directly by the employing agency. However, for positions with an increased level of trustworthiness (e.g. with access to sensitive data, with decision-making power in areas of potentially wide-ranging consequences), the submission of an extract from the criminal register is demanded. The same condition applies to management positions, police officers, public prosecutors, judges, diplomatic personnel and teachers. The extract from the criminal register includes the following information:

Liechtenstein Legal Gazette 1974 no. 46

Article 2 – Object of the inclusion in the criminal record

The following legally binding decision of a Liechtenstein criminal court are to be included in the criminal record:

- a) criminal convictions with a sentence of imprisonment or a fine of more than 200 francs;
- b) judicial convictions of juveniles in which, after determination of the crime or misdemeanour and the responsibility, a penalty is not imposed;
- c) decisions according to which convincing findings of foreign criminal courts which have been issued against Liechtenstein nationals and relate to a fact which is also punishable under Liechtenstein law are to be included in the criminal record;
- d) resolutions according to which criminal proceedings did not lead to a conviction due to the lack of responsibility for the crime or misdemeanour.

The OHAR keeps a file for every recruited State employee. In most cases, the personal file contains information gathered during the recruitment process as well as during the employment, such as changes of position within the administration, changes to the percentage of work-time (full-time/part-time employment), data regarding remuneration, promotions etc. The Office also keeps track of disciplinary and other measures imposed by the Government or a court as the information is forwarded automatically to the Office and recorded in the personal file accordingly.

Following the taking up of functions there is a probation period of two months after which the employment contract may be cancelled.

Given the size of the National Administration and the limited staff resources, there is no formal rotation policy in place. However, the general policy of publishing vacancies

first internally has led to a higher rate of rotation within the administration. Candidates for vacancies in the National Administration have to fulfil the same requirements, regardless of whether they worked before in the administration or elsewhere. The internal call for qualified candidates has been introduced in the wake of public criticism that the National Administration had grown too much, with the aim of allowing the administration to benefit from skills and knowledge acquired within the organisation and of providing for the possibility of filling vacancies with existing staff resources. This approach also gives internal candidates an opportunity to develop and broaden their skills and expertise.

Public officials have competitive remuneration. In 2012 (latest statistical data available) the average monthly salary of the whole economy stood at 6,380 Swiss francs, whereas this average amounted to 8,119 Swiss francs for employees at the National Administration. This average was 2.6 per cent higher than the corresponding average in Switzerland. Only two categories (financial and insurance services: 8,275 Swiss francs and educational services: 9,365 Swiss francs) had a higher monthly average. In addition, public officials have a high remuneration certainty. This may also be seen from the fact that no reduction of remuneration for public officials was decided in the last years despite the highly strained budgetary situation of public finances which led to a number of cuts in public subsidies. The remuneration of an individual public official is linked to career progression, qualification and promotion. The Public Officials Pay Act and the Government Ordinance (in their current version) contain all relevant information on the elements which constitute the salary of the various categories of public officials as well as on the method of determining that salary.

The National Administration places emphasis on systematic in-service training taking into account both the general needs of the service and individual needs of employees. Especially in light of future job requirements, individual skills are promoted in an optimal way and existing potential is utilised. Training is offered for function and office specific purposes as well as for expanding or conveying additional professional competence and for promoting social competence. Classes cover issues such as ethical leadership, teamwork, security at the workplace, cybersecurity, personal development, stress management, first aid, data protection, communication skills and many others. Each year, an internal basic and continuing training programme is put together. All employees have the opportunity to register for internal courses. In addition, technical training is offered.

Special training for senior members of the National Administration and certain offices vulnerable to corruption are being conducted by the Head of the Anti-Corruption Unit and the Deputy Prosecutor-General on the legal and practical framework for the application of the Code of Conduct for Public Officials on Corruption Prevention (see information regarding article 8 of the Convention). The following persons/offices have so far undergone the anti-corruption training: all police officers and auxiliary police; directors of all offices of the National Administration; the Financial Market Authority; the Data Protection Agency; the Office for Public Construction and Infrastructure, the Food and Veterinary Office. During the last five years over 200 (out of 900) staff members of the National Administration have benefited from this training.

Procedures for promotion depend on the position to be filled. For lower-ranking positions, vacancies are advertised within the office concerned. If the position cannot be filled adequately, then it is advertised within the whole administration. For higher-ranking positions, vacancies are advertised within the administration. If that

advertisement is unsuccessful, the vacancy is advertised publicly. Vacancies for the position of the director of an office always have to be advertised publicly.

There are annual performance appraisals of each individual employed by the National Administration carried out by their superiors in the various offices. The reviewed staff member also has the opportunity to give a feedback on his/her perception of the superior's performance. The results of the appraisals are included in the staff records managed by the OHAR.

There is no appeal mechanism in place for unsuccessful candidates to challenge a hiring decision, except for cases where the candidate suspects a conflict of interest. Any decision can be challenged referring to articles 6 and 7 (d) of the NPAA with the possibility of appeal before the Administrative Court. However, the Court could only declare the decision (to hire another person) as void, but not decide that the complainant has to be employed (since there is no legal entitlement to be employed). For decisions regarding remuneration, the procedure consists of addressing the issue before: 1) the superior/director of the office; 2) the Commission on Staff Matters (established under article 42 of the Public Officials Pay Act); 3) the Government; and 4) the Administrative Court. Complaints concerning all other decisions may first be addressed to the Government and then to the Administrative Court.

#### *(b) Observations on the implementation of the article*

The recruitment, hiring, retention, promotion and retirement of civil servants at the national level is regulated by the State Personnel Act and the State Personnel Ordinance. In general, public advertisement of vacancies takes place on the Internet through the electronic official gazette. In addition, vacancies are also made public in the two national newspapers. For lower-ranking positions, there is a general policy of publishing vacancies first internally to allow for some rotation within the administration and to use the existing resources. However, even internal candidates have to always fulfil all the requirements prescribed for the given position, and if they fail to do so, the position is subsequently advertised publicly. Vacancies at the director (head of office) level must always be advertised publicly. There is no appeal mechanism in place for unsuccessful candidates to challenge a hiring decision, except for cases where the candidate suspects a conflict of interest. OHAR keeps a file for every recruited official, including the disciplinary measures imposed. Public officials have competitive remuneration. Employees of the National administration are provided with training on various topics, including anti-corruption.

While the reviewing experts were overall satisfied with Liechtenstein's standards, certain practices raised concerns and were discussed during the country visit.

In particular, the reviewing experts expressed their concern over Liechtenstein's practice to limit recruitment to internal candidates, which may hinder diversification and undermine the merit principle. It was suggested that more junior positions could be advertised externally in order to enhance transparency and attract qualified external candidates. In addition, while the reviewing experts understood that the rotation system may be difficult to implement due to the small size of Liechtenstein's National Administration, such a system could be considered for particularly vulnerable positions, such as the Anti-Corruption Police Unit. Furthermore, the reviewing experts noted with concern the lack of an appeal mechanism for unsuccessful candidates to challenge the decision taken by OHAR and the hiring office.

### *(c) Challenges in implementation*

While Liechtenstein is largely in compliance with the obligations under this provision of the Convention, Liechtenstein is **encouraged** to further enhance transparency in the recruitment and promotion of public officials, including, where appropriate and possible within the limits of the National Administration, through strengthening the system for the rotation of positions that are considered especially vulnerable to corruption, and extending the public advertising of vacancies.

#### *Paragraph 2 of article 7*

2. *Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

The exercise of political rights is regulated in the People's Rights Act (**PRA**). The PRA states that all citizens of 18 years or more who have had their regular residence in Liechtenstein for at least one month before the date of election or vote may vote and stand for election. Criteria for the exclusion of a person to present a candidacy for election under article 2 PRA paragraph 1 (c) include a conviction for at least one year imprisonment under selected provisions<sup>1</sup> of the Criminal Code, including article 265 (bribery in the context of an election or a popular vote) or a conviction for a least five years imprisonment under any provision of the Criminal Code.

There is no requirement of asset declarations by candidates for public office. There is a broad consensus in Liechtenstein that the right to privacy also entails the right to keep one's financial situation private and that the right to privacy may be enjoyed by everybody.

Pursuant to article 41 of the State Personnel Act, candidatures by employees of the National Administration for public office must be notified to the Head of Office and to the competent Government Minister. The Minister shall then inform the Government. The Government may prohibit the exercise of such office, if it interferes with the fulfilment of official duties or would be incompatible with the official position. The Government takes account of the fact in this regard that running for office is a democratic right that may be curtailed only in exceptional cases.

At the local level, the Local Authorities Act excludes in article 47 certain categories of individuals from election into the Community Council:

- a) persons who are related to another member of the Council in a straight line or to the third degree of the side line;
- b) persons who are married to another member already elected or who live in a

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<sup>1</sup> The selected provisions include: a) the 14th, 15th, 16th, 17th, 18th, 24th or 25th section of the Special Part of the Criminal Code; b) articles 278a to 278d of the Criminal Code; and c) section 22 of the Special Part of the Criminal Code (punishable violations of official duties and related offences).

registered partnership, a de facto union with such a member or a in-laws to the second degree;

c) members of the Government;

d) members of the Administrative Court or the Constitutional Court; and

e) staff of the municipal administration.

Please find here a report of the OSCE Office for Democratic Institutions and Human Rights concerning the parliamentary elections in Liechtenstein of 2017:

<http://www.osce.org/odihr/elections/liechtenstein/292261?download=true>

### *(b) Observations on the implementation of the article*

Criteria concerning candidature for and election to public office are set out in the People's Rights Act and the Local Authorities Act. Candidatures by public officials for elected office must be notified to the Government, which may exceptionally prohibit the candidature if it interferes with the official's duties.

It was concluded that Liechtenstein is in compliance with its obligations under this provision.

### *Paragraph 3 of article 7*

*3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

The Liechtenstein authorities are currently considering measures to implement the recommendations issued by GRECO in the framework of the Third Evaluation Round on the transparency of party funding. To this end the Working Group for the Prevention of Corruption has prepared first proposals for legislative amendments. In August 2016, a debate has taken place in Parliament where the GRECO findings have been discussed. A vast majority of members of Parliament considered the existing requirements contained in the Law on the payment of contributions to political parties (LPCPP), LGBl. 1984 no. 31, as sufficient.

The deadline of the first report to be submitted by Liechtenstein to GRECO is end of September 2017.

The LPCPP provides for the public subsidisation of political parties at State level. It currently allocates a total amount of 710,000 Swiss francs, which is to be split between the various parties which: a) are represented in parliament; or b) have participated in the last elections in the two constituencies and obtained at least 3% of the total number of votes across the country even though they have not won a seat. This amount is distributed among the benefiting parties proportionally to the number of votes and paid

in semi-annual instalments (every 1st of March and 1st of September). In addition, a flat fee of 55,000 Swiss francs is allocated annually to each party represented in Parliament to help them pursue purposes of political education, public relations and participation in public policy development.

In order to benefit from the above grant, parties must apply for it (the application is to be sent by the competent organ to the Government's Financial Affairs Unit), be committed to the principles of the Constitution, and be able to demonstrate that they conduct activities for which the public contribution is made available. The contributions are paid upon submission of the approved party statutes, financial statements, and documentation of objectives and activities of the political parties. The LPCPP also states that the political parties concerned must keep accurate records of the use of the contributions and store the relevant documents. The annual financial statements have to be published in an appropriate manner. However, so far, only one party publishes its financial statements on its website. The other parties only make them publicly available on the occasion of the annual meeting of their general assembly. The Government may appoint an independent firm to carry out an audit. Once the allocation has been decided / agreed by the Government, the Financial Affairs Unit proceeds with the payments. The political parties in Liechtenstein have the status of associations and are subject to mandatory audits (article 251b of the Persons and Companies Act)

The political parties in Liechtenstein play a role which is not as prominent as in other parliamentary democracies, given the size of the party structures and the fact that members of Parliament exercise their function on a part-time basis. Moreover, the strong elements of direct democracy present in Liechtenstein provide citizens with direct participation rights by means of legislative initiatives and referenda, thereby continuously exposing parliamentary decisions to a possible challenge by the people.

Private donations to political parties are not regulated and do not have to be disclosed. However, the above-mentioned proposals for legislative amendments prepared by the Working Group for the Prevention of Corruption in light of GRECO recommendations also contain provisions dealing with private donations.

Campaign funding is also unregulated and is part of the considerations which are being given to the GRECO recommendations.

As mentioned under paragraph 2 of article 7, electoral candidates are not obliged to disclose their assets. There is a broad consensus in Liechtenstein that the right to privacy also entails the right to keep one's financial situation private and that the right to privacy may be enjoyed by everybody. Liechtenstein considers that the introduction of such an obligation could have a severe impact on the ability of political parties to find enough candidates to run for a political mandate (which in Liechtenstein is a part-time job without major income perspectives). A significant reduction of lists of candidates would be problematic for the democratic election process.

However, it should be noted that with the implementation of the 4th EU Anti-Money Laundering Directive, enhanced due diligence requirements will apply to domestic politicians as well. Expert scrutiny of the related financial flows by financial intermediaries and, in case a suspicious activity report is filed, by the Financial Intelligence Unit will enable criminal behaviour to be detected.

In addition, Liechtenstein requires its citizens to declare their world-wide income and assets in their tax declaration. The tax law has a strong sanctions regime (i.e. sanctions from twice the amount of the tax due on the non-reported income and assets to

imprisonment of up to six months). During the country visit, Liechtenstein reported to the effect that, where a tax declaration discloses a significant improvement in a taxpayer's financial affairs, the Tax Administration will inquire as to the reason for that improvement. The reviewers considered that this could be an effective measure for preventing and detecting corruption.

*(b) Observations on the implementation of the article*

Public funding of political campaigns is largely transparent. However, private donations to individual candidates or to political parties are left unregulated and do not have to be disclosed.

With a view to enhancing transparency in the funding of political parties, Liechtenstein is encouraged to consider enhancing the transparency of private donations to political parties, ideally through the introduction of a threshold for publication.

*(c) Challenges in implementation*

Liechtenstein is **encouraged** to consider enhancing the transparency of private donations to political parties, ideally through the introduction of a threshold for publication.

*Paragraph 4 of article 7*

*4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Article 40 of the State Personnel Act (SPA) stipulates that the exercise of secondary employment (even pro bono) is only permissible if it does not interfere with the fulfilment of official duties and is compatible with the official position. Employees must in any event notify assumption of secondary employment in advance to the director of their office (article 40 paragraph 2 SPA).

According to the State Personnel Ordinance (SPO) (article 33), the approval by the Government is required for the following:

- a) activities carried out wholly or partly during regular working hours;
- b) activities that might lead to conflicts of interest;
- c) acting as executive or exerting a mandate in the board of directors of significant national or regional companies;
- d) lectures exceeding a total of four weeks;
- e) paid or honorary secondary employment during working days with an off-duty weekly workload of more than ten hours; and
- f) activities implying health risks.

The director of the office is required to check whether the declared activity is subject to authorisation and if so, s/he must inform the Government.

The SPA (article 41) provides for similar limits when it comes to a secondary employment for public officials. Article 49 SPA provides for sanctions in the case of non-compliance with these rules, including a warning, reduction of pay, demotion or revocation.

Article 6 of the National Public Administration Act (*NPAA*), governs the rules for recusal. Accordingly, a member of the Government, a member of the Administrative Court, and any other public official is excluded from the performance of an official act:

- in matters in which the official is himself a party or in consideration of which the official stands to one of the parties in a relationship of joint beneficiary, jointly liable party, or liable to recourse;
- in matters pertaining to the official's fiancée, spouse or other such persons with whom the official is related by blood or by marriage or in a direct line or with whom the official is related by blood in a collateral line up to the fourth degree or by marriage in the second degree;
- in matters pertaining to the official's adoptive or foster parents, adoptive or foster children, wards or persons under their care;
- in matters in which the official was or still is appointed as an authorised party, administrator or manager of a party or in a similar way;
- in matters in which the official has participated in a subordinate municipal or national administrative authority in the issuing of the contested decree or decision or has served as a witness or expert; and
- in matters concerning a party with which the official has applied for a job or from which the official has received or accepted a job offer.

According to article 7 NPAA, disqualification in administrative procedures applies:

- if the official is in the case at issue excluded by law from exercising official duties in administrative matters;
- if the official himself or one of the persons referred to in article 6(a) expects a considerable advantage or disadvantage from the outcome of the administrative matter;
- if the official is himself participating as a member of a company or legal person (excluding the status of citizenship) to which the administrative matter pertains; or
- if another sufficient reason exists to doubt the impartiality of the official, especially if the official person is engaged in a legal or administrative dispute with one of the parties or is in a relationship of too close friendship or too great enmity with a party.

Sanctions for non-compliance with the NPAA provisions are set out in article 23 NPAA. In addition, if a decision is made when an official should have recused themselves, the decision is void.

In 2016, Liechtenstein adopted the Code of Conduct for Public Officials on Corruption Prevention, which also contains a chapter on conflicts of interest and side activities. The Code of Conduct is conceived as an awareness-raising and not disciplinary tool; however, it is based on the relevant provisions of the SPA and SPO which provide for disciplinary measures. At the initial training of newly hired staff, the Code of Conduct

is distributed.

### *(b) Observations on the implementation of the article*

Under the SPA, secondary employment of public officials is only permissible if it does not interfere with the official duties and must be notified to the director of the office. Some kinds of secondary employment further require the Government's approval (as listed in article 33 SPO). The SPA sets out sanctions for non-compliance with the notification obligation. The NPAA governs the rules for recusal and disqualification in administrative procedures.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## Article 8. Codes of conduct for public officials

### *Paragraph 1 of article 8*

*1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Upon entering service each public official, under article 108 of the Constitution, has to take the following oath:

“I swear that I will be loyal to the Reigning Prince, that I will obey the laws, and that I will strictly observe the Constitution, so help me God.”

The National Administration is governed by the basic principles of the rule of law (article 92 paragraph 2 and article 78 paragraph 1 of the Liechtenstein Constitution, equality before the law (article 31 LC), proportionality, and good faith. Every activity of the State requires a legal basis and must be justified by a sufficient, predominantly public interest. Additionally, article 37 of the State Personnel Act sets out general official duties. Employees are called upon to carry out the responsibilities delegated to them in person and in a conscientious, careful, economical, customer-friendly and impartial manner:

#### Article 37 SPA General duties

- 1) Employees have to perform the tasks assigned to them in person, conscientiously, carefully, economically, customer-friendly and impartially. They have to safeguard the legitimate interests of the state.
- 2) Employees support and represent each other in the exercise of official duties and have to, if circumstances require, temporarily carry out also other task than those belonging to their ordinary remit.
- 3) Employees are in particular obliged:
  - a) to comply with the Constitution, laws, ordinances and service regulations and to observe the instructions of superiors in a conscientious and reasonable manner;

- b) to use the working time only for official duties;
- c) to be polite, respectful, helpful and not to discriminate in the performance of their duties;
- d) to manage and use the entrusted values, equipment and materials carefully and in a cost-saving manner.

Employees are required to maintain confidentiality concerning official matters which, in light of their nature or according to specific provisions, must be kept secret (article 38 SPA). This obligation is maintained after termination of the employment relationship and subject to criminal liability:

Article 38 SPA Service confidentiality

- 1) Employees are obliged to maintain confidentiality concerning official matters which, in light of their nature or according to specific provisions, must be kept secret This obligation remains after termination of employment.
- 2) Exempt from confidentiality are, subject to other legal provisions, the official proceedings within the administration and the provision of information to superiors and to supervisory bodies.
- 3) Employees may act as parties, witnesses or court experts for official matters subject to service confidentiality only where they have been authorised in writing to do so, by the director of the office.
- 4) The authorisation shall be granted if the statement does not cause any significant disadvantages to the country and does not seriously compromise or complicate the performance of public duties.
- 5) Where the director of the office intends to refuse the authorisation, s/he shall seek the prior approval of the Government
- 6) The official secrecy duty does not prevent disclosures made in accordance with article 38a [of the present law] and mandatory reports to be filed under article 53 of the Criminal Code.
- 7) The Government shall regulate the matter in greater detail by ordinance, particularly on the grounds for refusal under paragraph 4.

Such ground for refusal would in particular be given if delivering the statement would run against the tactics of an investigation.

The provision in the Criminal Code on violation of official secrecy is also relevant:

Article 310 paragraph 1 Criminal Code

- 1) A public official or former public official who discloses or exploits a secret entrusted or made accessible to him exclusively by virtue of his office the disclosure or exploitation of which violates a public or a legitimate private interest is to be punished by a term of imprisonment of up to three years if the act is not punishable with more severe punishment according to another provision.

As mentioned before, about 200 (out of 900) public officials have so far been trained on the legal and practical framework for the application of the Code of Conduct. In addition, see the response under article 8 paragraphs 2 and 3 of the Convention for more information on the Code of Conduct.

To date, no public official has been investigated for corruption. One former public official is currently being investigated for serious fraud, and possibly in the future also for embezzlement and money laundering.

### *(b) Observations on the implementation of the article*

Upon entering service, each public official must take an oath of office. The SPA sets out general duties of public officials and requires them to maintain service confidentiality. The Criminal Code establishes an offence of violation of official secrecy.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *Paragraphs 2 and 3 of article 8*

*2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.*

*3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

The Code of Conduct was adopted in February 2016 by the Government following the enactment of the revised State Personnel Act - which introduced important new elements, such as rules on side activities and a reporting obligation. The Code of Conduct entered into force on 1 May 2016.

The Code of Conduct is conceived as an awareness-raising tool and not as a disciplinary measure; however, it is based on provisions of the State Personnel Act and the State Personnel Ordinance (which provide for disciplinary measures), the Criminal Code (which provides for criminal sanctions for passive bribery, article 304) and the National Public Administration Act (which provides for recusal and disqualification in administrative procedures, and sanctions for non-compliance — articles 6, 7 and 23 NPAA).

At the initial training of newly hired staff, the Code of Conduct is distributed.

The Code of Conduct contains rules about conflicts of interest, withdrawal from decisions, acceptance of gifts and other benefits, side activities, duty to report, etc. (see English version of the Code of Conduct in the attachment).

With regard to gifts, public employees are prohibited from demanding, accepting or obtaining promises of gifts or other advantages in connection with official matters, including for the benefit of third persons. Small, customary courtesy gifts are not deemed gifts or advantages. Article 32 SPO further specifies that gifts may only be accepted if:

a) they are commonly regarded as unobjectionable courtesies of minor value, the acceptance of which is called for by politeness (e.g. mass advertising articles such as calendars, pens, or notepads);

b) customary and appropriate hospitality is provided at general events at which participation is made necessary as a result of one's official duties or mandate or with respect to social obligations connected with the office (e.g. official receptions, social events serving the cultivation of official interests, anniversaries, topping-out ceremonies, inaugurations etc.);

c) the participation in hospitality takes place within the context of official acts, talks, tours or the like, and the hospitality is customary and appropriate, or if the hospitality is provided according to the rules of social interaction and politeness which the employee is not able to refuse without violating social norms; and

d) the advantage accelerates or facilitates the performance of official business (e.g. picking-up of employees from the train station by car).

Any acceptance of exceptionally permitted gifts (situations a. to d. above) require the approval of the supervisor. Employees must exercise extreme restraint when accepting invitations and employees should avoid that the acceptance of invitations be seen as interfering with official interests or influencing administrative decisions (principle of objective impartiality of article 32 paragraph 3 SPA). There is no centralized register of gifts or donations. Offices are free to decide whether recording gifts may be justified on the basis of their frequency and importance.

Moreover, the acceptance of gifts by public officials is punishable under criminal law (article 304 Criminal Code on passive bribery). To date, no case of passive bribery of public officials has been reported; however, there is an ongoing case concerning a former public official suspected of serious fraud, embezzlement and money-laundering.

In order to extend the application of the regulations on incompatibilities of functions and gifts contained in the SPA and SPO, the Government, when adopting the Code of Conduct, decided to include in the ownership or participation strategies for public enterprises an obligation to adopt and implement equivalent Codes of Conduct for their employees.

### *(b) Observations on the implementation of the article*

In 2016, Liechtenstein adopted the Code of Conduct for Corruption Prevention for Public Officials. It contains chapters on conflicts of interest, recusal, gifts and other advantages, secondary employment, candidature for public office and an obligation to report corruption. While the Code is only an awareness-raising tool and not a disciplinary tool, it is based on the relevant provisions of the SPA and SPO which provide for disciplinary measures. The disciplinary sanctions include: a warning; a written reprimand; reduction of wages; assignment of other duties; transfer; demotion; or termination of employment (article 49 SPA). The Director of each office is responsible for monitoring compliance and addressing non-compliance with the SPA and SPO, with the support of the OHAR.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *Paragraph 4 of article 8*

*4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public*

*officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.*

*(a) Summary of information relevant to reviewing the implementation of the article*

With the revision of the State Personnel Act, a new provision on a notification obligation has been introduced:

Article 38a SPA Notification obligation

- 1) Where employees, in the course of their duties, have a grounded suspicion that an offence has been committed, which relates to the legal scope of the public office to which they belong and which is prosecutable ex officio, they shall immediately notify the director of the office.
- 2) Those who in good faith make a notification in accordance with paragraph 1 or who deliver a witness testimony shall not be discriminated against in their professional position.

Pursuant to article 53, paragraph 1 of the Criminal Procedure Code, the director of the office is then subject to an obligation to file a report with the law enforcement authorities based on the notification received:

Article 53 CPC

- 1) If an authority is aware of a suspicion of a criminal act to be pursued ex officio, which relates to the legal scope of the public office, it is obliged to file a complaint with the Prosecutor General's Office of the National Police.

In order to further strengthen the protection of the reporting person, paragraph 6 was added to article 6 SPA:

- 6) The official secrecy duty does not prevent disclosures made in accordance with article 38a [of the present law] and mandatory reports to be filed under article 53 of the Criminal Code.

The Code of Conduct for Public Officials on Corruption Prevention explicitly states that the obligation for public sector employees to report suspicions of corruption and other offences may also be complied with by directly contacting the specialized Anti-Corruption Unit within the National Police in accordance with article 55 of the Criminal Procedure Code. For this purpose, a dedicated electronic mailbox as well as a hotline have been established. To date, no reports of corruption have been made.

*(b) Observations on the implementation of the article*

Public officials have a duty to report suspected crime to their director of the office (article 38a SPA), who is then subject to an obligation to file a report with the law enforcement authorities. In addition, the Code of Conduct for Corruption Prevention explicitly states that the reporting obligation may also be fulfilled by filing a report directly with the National Police in accordance with article 55 of the Criminal Procedure Code.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *Paragraph 5 of article 8*

*5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

Rules for situations where public officials move to the private sector are contained in article 39a of the revised State Personnel Act. Under article 39a SPA it is possible to impose cooling-off periods of up to two years:

##### Article. 39a SPA Independence

- 1) The authority employing personnel of administrative departments who are vested with responsibilities in the area of supervision, assessment, awarding and other similar decision-making power, may agree with this personnel that for a maximum of two years following termination of their duties, they may not be hired by an employer or supplier who has been significantly concerned by decisions of the said department in the past two years prior to termination of employment.
- 2) It can be agreed that in the event of breach of the prohibition referred to in para. 1, penalties amounting to up to one year of the gross annual salary shall be applicable.
- 3) The Government shall settle the details by ordinance.

The condition of the maximum two years cooling-off period may be included in the particular employment contract which is explained to and eventually signed by the concerned public official.

In order to further reduce such conflicts of interest, article 6 paragraph 1 of the National Public Administration Act was supplemented in the framework of the same revision by an additional criterion triggering the obligation for the official to refrain from taking a decision concerning a third party if s/he has applied for a job or received/accepted such an offer from that third party (see also information above).

There is no asset or financial disclosure system/obligation for elected or public officials. While this obligation has been considered, there is a broad consensus in Liechtenstein that the right to privacy also entails the right to keep one's financial situation private and that the right to privacy must be enjoyed by everybody. However, Liechtenstein requires its citizens (including elected and public officials) to declare their world-wide income and assets in their tax declaration. The tax law has a strong sanctions regime (i.e. sanctions from twice the amount of the tax due on the non-reported income and assets to imprisonment of up to six months). During the country visit, Liechtenstein reported to the effect that, where a tax declaration discloses a significant improvement in a taxpayer's financial affairs, the Tax Administration will inquire as to the reason for that improvement. The reviewing experts considered this could be an effective measure to detect corruption (including conflict of interests). The reviewers considered that this could be an effective measure for preventing and detecting corruption.

For further measures to prevent conflicts of interests and regulate outside activities and gifts, please refer to the information regarding article 7, paragraph 4 and article 8 paragraphs 2 and 3 of the Convention.

*(b) Observations on the implementation of the article*

The issues of conflict of interest, gifts and outside activities are regulated in the SPA and are also covered by the Code of Conduct for Corruption Prevention.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 6 of article 8*

*6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.*

*(a) Summary of information relevant to reviewing the implementation of the article*

If legal obligations or obligations under employment law are violated, article 49 SPA provides for measures to secure proper fulfilment of responsibilities, which may include: a) a warning or a written reprimand; these are issued by decision of the supervisor or responsible member of the Government; b) reduction of wages (up to 30% for a maximum period of three years); c) assignment of other duties; d) transfer; e) demotion; or f) termination of the employment relationship: such measures are ordered by Government decree after hearing the supervisor and the employee concerned.

Decisions and decrees may be appealed to the Government within 14 days, or by filing a complaint with the Administrative Court (article 55 SPA). If the violation concerns official duties or other related punishable acts as referred to in articles 302 et seq. Criminal Code (acceptance of gifts, bribery, abuse of authority, violation of official secrecy), the Prosecutor-General's Office must be informed and the usual criminal procedural provisions apply.

The disciplinary and the criminal procedures are carried out independently of each other. The disciplinary procedure may refer to the outcome of the criminal procedure. No central register is maintained of disciplinary proceedings and sanctions applied for breach of duties, except for the criminal register. Disciplinary measures are contained in the personnel files of the employee in question.

No statistics are available. No central register is kept for disciplinary proceedings. Disciplinary measures taken against a public official are recorded in the personal file kept by the Office of Human and Administrative Resources.

*(b) Observations on the implementation of the article*

The SPA includes a range of disciplinary measures applicable to public officials in breach of the standards established under article 8 of the Convention, such as a warning, a written reprimand, reduction of wages, assignment of other duties, transfer, demotion

or termination of employment.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## Article 9. Public procurement and management of public finances

### *Paragraph 1 of article 9*

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:*

*(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;*

*(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;*

*(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;*

*(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;*

*(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Public procurement in Liechtenstein is governed by the relevant EEA rules (EU Directives and directly applicable EU regulations) and the EFTA Convention (<http://www.efta.int/media/documents/legal-texts/efta-convention/annexes/AnnexR.pdf>).

Since April 2014, Liechtenstein is also a State party to the revised WTO Agreement on Government Procurement: ([https://www.wto.org/english/docs\\_e/legal\\_e/rev-gpr-94\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm)).

The Specialized Unit for Public Procurement, under the Office of the Prime Minister, is responsible for procurement and for giving advice to contracting authorities. The Unit currently consists of two staff members. There are no particular screening procedures applied to the current staff of the Unit. However, future employments will most

probably fall under the requirement to submit an extract of the criminal record (see information provided under article 7 paragraph 1). The staff of the Unit is subject to continued training requirements as are all public officials.

In 2008, two EU directives (2004/17/EC and 2004/18/EC) were incorporated into national law and the legislation on public procurement was updated (Law on the Procurement of Utilities for public works contracts, and supply and services contracts in water, energy, transport, and postal services, LGBl. 2005 no. 220; Law on Public Procurement for all other public purchases, LGBl. 1998 no. 135). These laws apply to public purchases, and to projects jointly undertaken by public and private entities when the financial contribution of the public contracting entity exceeds 50%. The threshold values used are those set by the EEA and the WTO Agreement. They are published under:

[https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgbld=2016066000&version=1&signed=n&ta\\_blesel=0](https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgbld=2016066000&version=1&signed=n&ta_blesel=0)

and:

[https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgbld=2016067000&version=1&signed=n&ta\\_blesel=0](https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgbld=2016067000&version=1&signed=n&ta_blesel=0)

However, the above mentioned directives have been repealed by new EU directives, namely the Directive 2014/23/EU on the award of concession contracts, Directive 2014/24/EU on public procurement and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. The official transposition deadline for these new Directives was April 2016; Liechtenstein plans to transpose them by November 2017.

According to the 2005 Public Procurement Act, open tenders are the rule to assign contracts. Contracts above the EEA thresholds are awarded according to international rules; they are announced in the EU electronic government procurement system. For contracts below the EEA thresholds, public utilities usually purchase through tenders by open or negotiated procedures; otherwise, relevant international rules apply. Since 2008, a contracting authority may also use a new procedure termed the "competitive dialogue" and some new purchasing techniques such as the dynamic purchasing system and electronic auction. Under the two laws mentioned above, contracts are awarded according to the most economically advantageous tender or to the tender with the lowest price. Additional criteria, such as quality, environmental characteristics and cost-effectiveness, may also be taken into account.

All relevant information for interested suppliers may be found at: <http://www.llv.li/#/11615/fachstelle-offentliches-auftragswesen> <<http://www.llv.li/>>

The public procurement rules impose strict requirements on participation in public tenders. This permits an assessment whether economic operators are able to participate in a tender on the base of economic, financial, qualitative and technical criteria. The participation requirements also serve to effectively combat fraud and corruption. Under the APP the contracting entity is, inter alia, required to exclude a candidate or tenderer from the procurement procedure who has been issued with a final sentence on grounds of membership in a criminal organisation, bribery, fraud, criminal breach of trust, abuse of subsidies, or money laundering.

Formal complaints about the administration should be lodged primarily with the authority which issued the respective act, made the decision or passed a regulation. Decrees by contracting entities may be appealed within 14 days by way of complaint to

the Complaints Commission for Administrative Matters. Decisions by the Government and by the Complaints Commission may be appealed by way of complaint to the Administrative Court.

Article 106 of the National Public Administration Act (NPAA) provides for the possibility of declaring an administrative act or decree null and void. The grounds for nullity set out in article 106 paragraph 1 include a substantial violation of public rights or interests that must absolutely be observed under the binding legal provisions governing the administrative procedure or otherwise under the Constitution, laws or ordinances in effect (subpara. (a)) or where the administrative act has been obtained fraudulently by incorrect information (subpara. (d)). Another ground for nullity potentially applicable in connection with corruption is referred to in article 106 paragraph 1(c) NPAA, namely where the preconditions for issuing a decree or decision were completely lacking or grossly exceeded or abused discretion.

The decree or decision may be revoked by the Complaint Commission for Administrative Matters, the Administrative Court or by the issuing body itself. The Official Liability Act, LGBI 1966 no. 24, moreover provides for liability of the public sector for damages unlawfully inflicted upon third parties by natural person serving as organs of the public sector in the exercise of their duties.

Complaints received in the past regarding public procurement decisions were mostly associated with procedural matters (after amendments to the procedures), and the overall situation improved after the relevant know-how was gained by the National Administration.

Information on the Government procurement procedures applied in Liechtenstein may be found here: <http://www.llv.li/#/11973>

### *(b) Observations on the implementation of the article*

The Specialized Unit for Public Procurement is the body responsible for the overall coordination of procurement in Liechtenstein and for giving advice to contracting authorities. Procurement is regulated by the relevant EU directives, which are applicable in Liechtenstein by way of their transposition into national law, in particular the 2005 Public Procurement Act. In addition, the directly applicable EU regulations, the EFTA Convention and the WTO's revised Agreement on Government Procurement are also applicable.

According to the 2005 Public Procurement Act, open tenders are the rule to assign contracts above the relevant de minimis threshold provided for in the applicable EU directives. Contracts are awarded according to the most economically advantageous tender while additional criteria, such as quality and environmental characteristics may be taken into account. There is a complaints and administrative appeals system in place. Since Liechtenstein has to apply EEA law, there is the possibility of lodging a complaint with the EFTA Court of Justice (the equivalent of the EU Court of Justice in the EEA institutional setup).

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 2 of article 9*

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, *inter alia*:

- (a) Procedures for the adoption of the national budget;
- (b) Timely reporting on revenue and expenditure;
- (c) A system of accounting and auditing standards and related oversight;
- (d) Effective and efficient systems of risk management and internal control; and
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

*(a) Summary of information relevant to reviewing the implementation of the article*

The procedures and competences for the elaboration and adoption of the national budget are set out in the Financial Budget Act, LGBI. 2010 no. 373. According to article 28 and 29 of the Financial Budget Act, the Government is responsible for financial supervision, especially the Minister responsible under the procedural rules. Parliament exercises supreme supervision of finances. The procedures are based on a "bottom-up" approach, with the competent offices of the Government and National Administration planning as the first step the expenditure and revenue items in their respective scopes of responsibility. The draft budget is then considered by the Government and subsequently submitted to Parliament for approval. Parliament generally adopts the budget for the coming year in November each year in the form of an annual Finance Act. Based on the budget proposal, the Government prepares a multi-year budget plan. If the budget is exceeded, Parliament must approve an additional budget allocation. The Government is required by the Constitution to submit an annual report on the implementation of the state budget and the use of public finances. The law specifies that the national accounts must be submitted to Parliament for approval in the first half of the following year.

The new National Audit Act, LGBI. 2009 no. 324, entered into force on 1 January 2010. The goal of the reform was in particular to strengthen the National Audit Office by attaching it organically to the Parliament (as opposed to the Government until then). The Office carries out its duties autonomously and independently. It defines an annual audit plan and communicates it to the Government after consulting the Control Committee of Parliament.

The responsibilities of the Office include:

- a) auditing the national accounts;
- b) auditing the financial conduct and accounting of the offices of the National Administration, the Data Protection Office, the Secretariat of Parliament, the courts, to the extent financial supervision extends solely to the administration of justice, public enterprises, to the extent provided by special laws;
- c) auditing State financial support (subsidies) and payments, including service agreements;

- d) auditing public procurement;
- e) auditing the internal control system with respect to cost-efficiency and effectiveness; and
- f) auditing IT systems with respect to security, cost-efficiency and functionality.

Audits carried out by the Office are to take into account both legality checks and cost-effectiveness assessments. The Control Committee of the Parliament or the Government may mandate the Office to carry out special audits and inquiries. The Office decides in accordance with its regular audit programme whether to accept or reject the mandate.

The Office has become a central institution for the supervision of State administration and enjoys particular guarantees of independence (such as the appointment of its director by Parliament for eight years, renewable once).

Article 11 subparagraph e of the National Audit Act stipulates that the National Audit Office examines the internal control systems of the offices for their efficiency and effectiveness. On the basis of the findings of this examination the internal control systems (ICS) of the respective office are adjusted or else, specific ICS-projects are launched. In 2010, the Government adopted a standardized approach regarding the introduction / management of ICS in Liechtenstein which is gradually introduced in individual offices. The financial situation (income/expenses) of the different offices is continuously reported to the Minister of Finance by the Financial Affairs Unit on a monthly basis.

If the Control Committee or the National Audit Office finds errors, they are corrected or amended accordingly. Remarks regarding improvement potentials are tested by the responsible office. In case of more severe violations by individual persons, disciplinary measures, ranging from a warning to the termination of the work contract, as well as criminal sanctions may be taken.

Please find Standard and Poor's AAA rating of Liechtenstein here: [http://www.liechtenstein.li/fileadmin/Dateiliste/liechtenstein-business.li/Dokumente/Downloads/Triple\\_A\\_Rating\\_S\\_P.pdf](http://www.liechtenstein.li/fileadmin/Dateiliste/liechtenstein-business.li/Dokumente/Downloads/Triple_A_Rating_S_P.pdf)

Please find the latest annual report and financial accounts of the Government to Parliament here:

[http://bua.gmg.biz/bua/Services/pdf/bua2016\\_030.pdf?nr=30&year=2016](http://bua.gmg.biz/bua/Services/pdf/bua2016_030.pdf?nr=30&year=2016)

### *(b) Observations on the implementation of the article*

The procedures and competences for the elaboration and adoption of the national budget are set out in the Financial Budget Act. The national budget is prepared by the Government and approved by Parliament. The Government must submit detailed annual reports on revenues and expenditures to Parliament. In accordance with the National Audit Act, the National Audit Office is responsible for auditing the national accounts, State subsidies and payments and public procurement. The Office also examines the internal control systems of the individual public offices for their efficiency and effectiveness. If an error is found, the Office can propose corrections or take disciplinary measures, such as a warning or a termination of the work contract.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 3 of article 9*

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

*(a) Summary of information relevant to reviewing the implementation of the article*

The principles of organisation of the National Administration are governed by the Law on the Administrative Organisation of the State, LGBl. 2012 no. 348. It contains administrative legal principles that must be observed in administrative proceedings, such as when issuing decrees, as well as the provisions governing legal remedies against such decrees.

The Public Information Act (*PIA*), governs the general obligation of the administration to provide information to the public about its activities (see information regarding article 10, subparagraph (a) of the Convention).

Also relevant is the Law on the Procedures of Parliament and Oversight of the State Administration, LGBl. 2003 no. 108, which in particular provides for oversight of the National Administration by Parliament and its Control Committee. Finally, the independent National Audit Office plays an important role, whose organisation and competences are governed by the Financial Budget Act and in particular the National Audit Act (see information regarding article 9, paragraph 2 of the Convention).

The procedures for the storing of official documents as well as for access to the archives are set out in the Archives Act, LGBl. 1997 no. 215 and the its Government Ordinance, LGBl. 1999 no. 151.

The archives are open to everybody who can prove a valid interest in material stored there. Access to newer files is limited by the legal waiting period of 30 years for general material and 80 years for material pertaining to people. The material can be viewed in a reading room. Visitors must be able to identify themselves if asked to do so.

No statistics are available.

*(b) Observations on the implementation of the article*

This provision of the Convention is implemented through various national laws, including the Law on the Administrative Organisation of the State, the Public Information Act, the Financial Budget Act, the National Audit Act and the Law on the Procedures of Parliament and Oversight of the State Administration. The procedures for storing official documents and providing access to archives are set out in the Archives Act and its corresponding ordinance.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## Article 10. Public reporting

### *Subparagraph (a) of article 10*

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

*(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Public information is governed by the Public Information Act (**PIA**) and the Public Information Ordinance (**PIO**), which provides details on the provisions contained in the PIA. The Ordinance also clearly outlines the ‘request of information’ process.

Access to public information must take place according to the principles of timeliness, completeness, appropriateness, clarity, continuity, balance, and confidence building. Information ex officio is provided in the form of press releases in the media, via official promulgation, via the national television channel and the municipal channels, or via the administration's own publications.

By virtue of the PIA, every person who can assert a justified interest has a right to access official documents, to the extent not opposed by preponderant public or private interests and as long as the files are still being processed by the competent office and have not yet been archived. The term ‘justified interest’ is defined in the Archives Act, which states that “a justified interest exists in particular when the material is used for official, scientific, home country-related, genealogical, legal, academic or journalistic purposes or to exercise legitimate personal interests” (art. 12). Requests for access to files must be submitted in writing and with reasons. The authority may charge a fee for extraordinary efforts and must always include reasons for not providing the requested information. Inquiries regarding the scope of activities of the National Administration may be made without a form and in general free of charge at the national authorities and the municipalities.

No guidelines have been developed to guide the authorities in providing access to information.

There is no body responsible for the overall coordination of access to information. In addition, there is no general oversight of information requests situated with one particular body since the requests are handled by the individual offices. This is again also due to the small size of Liechtenstein’s National Administration.

Appeals can be made to the Government and to the Administrative Court. Liechtenstein referred to several cases before the Administrative Court that overruled the decisions of

authorities not to grant access to information. The PIA also sets the rules on the openness of meetings of Parliament, commissions and municipalities.

Information is available publicly through the Internet access to the Liechtenstein Portal ([www.liechtenstein.li](http://www.liechtenstein.li) <<http://www.liechtenstein.li>>), including a database of legislation where all legal texts are available in a constantly consolidated format ([www.gesetze.li](http://www.gesetze.li) <<http://www.gesetze.li>>). Further information is available on the website of the National Administration ([www.llv.li](http://www.llv.li) <<http://www.llv.li>>) as well as on the website of the Government ([www.regierung.li](http://www.regierung.li) <<http://www.regierung.li>>).

In relation to information about a decision made by a public official, article 83 of the National Public Administration Act requires decision-makers to provide reasons for adverse decisions. Article 85 NPAA gives a right to appeal a decision.

### *(b) Observations on the implementation of the article*

Access to information is governed by the Public Information Act and Ordinance. Information ex officio is provided via official promulgation, national television, press releases and publications. In addition, anyone can request access to other official documents, which may only be withheld exceptionally if there is an overriding public or private interest. If access to information is denied, appeals can be made to the Government and to the Administrative Court.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *Subparagraph (b) of article 10*

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

...

*(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and*

### *(a) Summary of information relevant to reviewing the implementation of the article*

As a member of the European Economic Area Liechtenstein has to comply with a broad spectrum of IT and eGovernment-related requirements. Those requirements are namely those set by the EU within the framework of the 'i2010' initiative and those relating to the implementation of EU directives, such as the EU directive on services in the internal market. The implementation of that directive through the Services Act, LGBl. 2010 no. 385, aims to overcome bureaucracy burdens and facilitate cross-border supply of services while promoting process transparency and the use of electronic procedures.

The eGovernment Act, LGBl. 2011 no. 575, and the corresponding Government Ordinance, LGBl. 2011 no. 600, promote electronic communication, identification and

authentication in electronic commerce and electronic records management by public authorities, thereby facilitating public access to the decision-making processes.

Further information on the activities of the Liechtenstein authorities in respect of eGovernment may be found

here: [https://joinup.ec.europa.eu/sites/default/files/egov\\_in\\_liechtenstein\\_-\\_january\\_2015\\_-\\_v\\_12\\_0\\_final.pdf](https://joinup.ec.europa.eu/sites/default/files/egov_in_liechtenstein_-_january_2015_-_v_12_0_final.pdf)

### *(b) Observations on the implementation of the article*

As a member of the European Economic Area, Liechtenstein complies with a range of IT and e-Government-related requirements to facilitate public access to the decision-making authorities. These are implemented through the 2010 Services Act and the 2011 eGovernment Act, which promote electronic communication and facilitate access to public authorities.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *Subparagraph (c) of article 10*

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

...

*(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

The Financial Intelligence Unit in its annual reports regularly publishes assessments on the risks for abuse of the financial centre, including for corruption-related activities. The latest report may be found under:

[http://www.fiu.li/images/GzD\\_FIU\\_Jahresbericht\\_2015\\_EN.pdf](http://www.fiu.li/images/GzD_FIU_Jahresbericht_2015_EN.pdf)

In addition, all evaluation and compliance reports adopted by GRECO in the framework of its peer review mechanism as well as the country report of Liechtenstein under the first UNCAC review cycle have been made public on the website of the Office for Foreign Affairs: <http://www.llv.li/#/114834/combating-corruption>

The Anti-Corruption Unit within National Police is responsible for the establishment of the annual crime statistics which are published in the annual report of the Government to the Parliament. So far, there has only been one case of alleged embezzlement of

public funds. The relevant investigations are currently being conducted by the Police.

*(b) Observations on the implementation of the article*

Liechtenstein referred to the annual reports of the FIU and the annual crime statistics by the Anti-Corruption Unit.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## Article 11. Measures relating to the judiciary and prosecution services

### *Paragraph 1 of article 11*

*1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Article 33 of the Constitution (LC) guarantees the right to an ordinary judge. It also provides that no special courts may be instituted. The number of courts and their competences are exhaustively enumerated at the constitutional level (Articles 97 to 106 LC). The Court of Justice has jurisdiction over civil and criminal matters in the first instance, the Court of Appeal in the second instance, and the Supreme Court in the last instance. The organization of these ordinary courts is governed by the Court Organization Act, LGBl. 2007 no. 348. Liechtenstein also has public law courts, the Administrative Court and the Constitutional Court. The legal basis for the Administrative Court is set out in the National Public Administration Act (NPAA). On the basis of the Constitutional Court Act, LGBl. 2004 no. 32, the Constitutional Court has the following competences: protection of constitutionally guaranteed rights, adjudication of conflicts of competence between the courts and the administrative authorities, decision on election complaints, review of the constitutionality of laws and international treaties and of the constitutionality, legality, and compliance with international treaties of ordinances, and decisions on claims filed against Ministers.

According to article 95 paragraph 2 LC, judges are independent in the exercise of their judicial office within the lawful limits of their powers and when engaged in judicial proceedings. They must always include reasons with their decisions and judgements. The involvement of non-judicial organs in jurisprudence is permissible only to the extent explicitly provided for by the Constitution (article 12 LC: Reigning Prince's Right of Pardon).

There are no judicial immunities available for judges and they are subject to normal criminal responsibility for any action.

The courts of Liechtenstein make use of professional judges (who have satisfied the

conditions for preliminary employment/training as candidate judges and the final recruitment) and lay judges (citizens appointed for a renewable term of five years, they remain in office until their successor is sworn in). Of the 59 professional judges currently in office, 17 work full-time, 41 part-time and 1 ad hoc (appointed for a specific period of time or a specific task or case, as the need arises). The 59 professional judges and 12 (part-time) lay judges are assisted by approximately 40 staff working for the courts.

Given the small size of Liechtenstein and workload, only the first-instance judges are appointed for full-time service. Appeal judges as well as judges at the Supreme and Constitutional courts work part-time.

Lay judges are only involved in criminal cases. For example, in cases concerning crimes and serious misdemeanours, three out of five judges on the senate are lay judges. With regard to their recruitment, these positions are advertised through a public announcement and their selection is done by the Judicial Selection Commission. Lay judges are appointed for the term of five years.

Admission to the profession of lawyers and exercise of the legal profession in Liechtenstein are governed by the Lawyers Act, LGBI. 2013 no. 415. The Chamber of Lawyers represents the interests of the legal profession in Liechtenstein and is in charge of safeguarding the honour, reputation, and rights of the legal profession and of supervising the duties of lawyers.

The recruitment of judges is governed by the Judicial Service Act (JSA), LGBI. 2007 no. 347. Generally, junior judges recruited to work professionally in the Liechtenstein judiciary in first instance courts need to be certified lawyers and undergo a six months traineeship after a selection process based on open public competition and selection by the conference of court presidents; later, they will undergo the recruitment phase. The gross annual salary of a first instance junior professional judge (or prosecutor) is approx. 100,000 Euros.

With the 2003 revision of the Constitution, the Judicial Selection Commission (JSC) was established as an autonomous and independent constitutional body separate from the legislative and executive power (article 96 LC). The JSC is chaired by the Head of State who has a casting vote. Every electoral group represented in Parliament delegates one representative to the body, and the Head of State delegates members equal in number to the representatives of the Parliament. The Minister of Justice belongs to the body ex officio. By including representatives to the JSC who have been delegated by the Head of State and appointed in their personal capacity to exercise their function independently, the Constitution aims to establish a balance with the representatives delegated by Parliament and thereby to neutralize extrajudicial influences. The members appointed by the Head of State are currently a Swiss judge (President of the EFTA Court), an emeritus judge of the Austrian Supreme Court (Honorary President of the International Association of Judges), and two lawyers. The JSC does not have disciplinary powers.

Candidates selected by the JSC are nominated for election by Parliament. Candidates elected by Parliament are then formally appointed as judges by the Head of State. If Parliament rejects a candidate recommended by the JSC, a reconciliation procedure between Parliament and the JSC must be carried out within four weeks with the goal of agreeing on a new candidate. If no agreement is reached, Parliament must recommend an opposing candidate and call a popular vote; in the event of a popular vote,

Liechtenstein citizens have the right to nominate candidates subject to the conditions of an initiative (article 64 LC). This takes account of the democratic constitutional principle of the participation of the people, and it leaves the final decision to the people if there is disagreement between Parliament and the JSC. At all times, Parliament has the possibility of rejecting a candidate recommended by the JSC. As the Head of State, the Reigning Prince must appoint the candidate elected by Parliament or the people, even if the candidate was not recommended by JSC. The appointment procedure is thus characterized by checks and balances among the participating powers of the State.

Candidates for appointment as ad hoc judges must meet the requirements applicable to the appointment of the judge to be replaced (article 3 JSA).

#### Article 3 JSA Ad hoc judges

- 1) An ad hoc judge can be appointed at the request of the president of the competent court, if a court is substantially impaired in its function.
- 2) Ad hoc judges may be appointed for a fixed period or to accomplish a single or multiple transactions. The assignment of the transactions is carried out by the allocation of the competent court.
- 3) The procedure for the appointment of ad hoc judges is based on the Act on the Appointment of Judges. There is no public advertisement of the vacancy for ad hoc judge.
- 4) Anyone who meets the requirements to replace the outgoing judge may be appointed as an ad hoc judge.

The JSA guarantees that judges are neither removable nor transferable unless the JSA provides otherwise (article 2):

#### Article 2 JSA Judge

- 1) Judges, within the meaning of this Act, are full-time, part-time and ad hoc judges of the Princely Court of Justice, the Princely Court of Appeal and the Princely Supreme Court.
- 2) Judges are independent in the exercise of their judicial duties. They are bound only by the law.
- 3) Judges may not be removed nor transferred, unless this Act provides otherwise.

While full-time judges in principle leave their judicial service through resignation or ordinary retirement, the service of part-time judges is generally completed at the end of their term. Other reasons for the end of service for both groups are set out in article 32 JSA, namely termination of service by the disciplinary tribunal (which is formed by current judges) on grounds of incapacity, disciplinary punishment, dismissal from service, loss of office due to conviction to more than one year of imprisonment, or loss of required nationality.

A disciplinary penalty is imposed on judges who have culpably breached their professional or official duties if the breach of duty constitutes a disciplinary offence in light of the type or gravity of the breach, repetition, or aggravating circumstances. If the breach of duty is minor (administrative offence), an administrative penalty (warning) is imposed. Every disciplinary penalty must be entered in the personnel records (article 39 JSA). Disciplinary penalties include a reprimand, reduction of salary, and dismissal from service. In the case of part-time judges, the only disciplinary penalty available is dismissal from service (article 42 JSA). The disciplinary procedure is governed by the provisions of the Judicial Service Act, which stipulates the procedure to be followed. Any necessary investigation is carried out by an investigating judge appointed to the particular case. The provisions of the Code of Criminal Procedure are applied on a

subsidiary basis. There are no guidelines regarding the penalty.

The judges on the disciplinary tribunal include:

- a) the president of the Court of Appeal as a single judge for the Court of Justice (first instance) president and the judges of the Court of Justice;
- b) the Supreme Court president as a single judge for the Court of Appeal president, the Court of Appeal judges and the Supreme Court judges;
- c) a disciplinary senate comprising three legally qualified Supreme Court judges for the president of the Supreme Court.

Articles 56 and 57 of the Court Organization Act provides for rules on the exclusion and self-withdrawal of judges and other judicial functions (including experts), for instance in case of a personal interest in a case under consideration, the existence of personal ties with one of the parties or of responsibilities in the management of an entity involved in the proceedings:

#### Article 56 COA Recusal

Judges, registrars, writing and recording clerks, executors and non-judicial notaries may not hold office if they:

- a) have a personal interest in the case;
- b) are or were married to a party or a participant to the proceedings, are living or have lived in a registered partnership or a factual cohabitation, are related or in-laws to the 4th degree. Relationships based on election, stepchildren or foster care are equated to natural parent-child relationships.
- c) are representatives, proxy agents, employees or organ of a person involved in the proceedings;
- d) have acted in the matter as a judge, judicial officer, writing or recording clerk in a lower court, legal representative of a party or of a participant to the proceedings, investigative judge, prosecutor, expert or witness or are witnesses in the proceedings.

#### Article 57 COA Refusal

Judges, registrars, writing and recording clerks, executors and non-judicial notaries may themselves request their removal or be rejected by the parties and the participants to the proceedings, if:

- a) there is a close friendship, a personal enmity or a particular relationship of obligation or dependence to a party or a participant to the proceedings;
- b) they are in a dispute with a party, the prosecutor or a participant to the proceedings or they could not be impartial in the matter for other reasons.

All judge functions are incompatible with secondary activities likely to affect the due performance of their duties, as well as with membership in Parliament or Government, or with the mandate of a mayor or member of a municipal council, with a function as a lawyer or trustee or assets manager, and professional judges may not exercise an activity; professional judges may carry out other secondary activities only with the approval of the supervisory authority (articles 24-25 JSA):

#### Article 24 JSA Excluded activities

- 1) Judges may not engage in activities, while off-duty, that may impair the reputation or the independence of their official office or that may impede in fulfilling their official duties or endanger other essential official interests.

- 2) Judges may not belong to the Parliament nor the Government and may not practice the function of a community leader or a council of a Liechtenstein municipality.
- 3) Full-time judges are not permitted to operate either as lawyers, patent attorneys, nor as trustees or asset managers.
- 4) There are no restrictions to memberships in the courts, commissions and advisory boards, which are appointed by the judge selection committee, by Parliament or by the Government, unless otherwise provided for by law.

#### Article 25 JSA

##### Secondary employment of full-time judges

- 1) Secondary employment is any employment exercised by full-time judges outside of his service and outside of activities pursuant to Art. 24 para. 4.
- 2) The acceptance, nature and extent of secondary employment must be approved by the supervisory body.
- 3) The competent authority may prohibit full-time judges from having secondary employment, if this may hinder the performance of official duties.

Article 22 JSA sets out the prohibition of the acceptance of gifts. Accordingly, judges are prohibited from accepting gifts or other advantages that are offered to them or their relatives directly or indirectly in relation to the discharge of their office. They are likewise prohibited from soliciting gifts or other advantages in relation to the discharge of their office or from having such gifts or advantages promised to them. § 304 of the Criminal Code enumerates the possible penalties which - depending on the value of the advantage - may extend to imprisonment of five years.

#### Article 22 JSA Prohibition of the acceptance of gifts

Judges are prohibited from accepting gifts or other benefits that are offered to them or their relatives directly or indirectly with regard to their official office. They are also prohibited from having provided or promised gifts or other benefits in relation to their official office.

For the staff working at the courts, the relevant provisions of the State Personnel Act apply. (see information regarding article 8 of the Convention).

In regard to the compensation of judges, a distinction is made as to whether they are full-time (appointment until retirement age) or part-time (with a term of five years) or appointed on a case-by-case basis (ad hoc judges). While full-time judges are paid an annual fixed salary (increasing over years of service) in accordance with the Salary Act, LGBI. 1991 No. 6, the other two groups receive performance-related compensation (based on their workload as judges) as set out in the Law on the Remuneration of Members of the Government and Commissions as well as of Part-Time and ad hoc Judges, LGBI. 1982 no. 21. The two public-law courts (Administrative Court, Constitutional Court) and the Supreme Court do not have full-time judges.

Decisions by the appellate instances (Administrative Court/Court of Appeal/Supreme Court/Constitutional Court) are available at [www.gerichtsentscheide.li](http://www.gerichtsentscheide.li) free of charge. There is also a similar pay-service: [www.rechtportal.li](http://www.rechtportal.li). There is no electronic record for each case. However, the courts use databases in which their own correspondence is stored. In principle, all incoming documents could be scanned and recorded in the database as well, but so far this is not being practiced.

#### *(b) Observations on the implementation of the article*

Independence of the judiciary is established in the Constitution. The court organization is governed by the Constitution, the Court Organization Act, the National Public Administration Act (with regard to the Administrative Court) and the Constitutional Court Act. The recruitment of judges is regulated by the Judicial Service Act and the selection of judges is done by the Judicial Selection Commission.

Given the small size of Liechtenstein and the small number of cases to deal with, Liechtenstein uses part-time judges for a limited time only. In fact, all judges of the Supreme and Constitution Court serve on a part-time basis. While this is understandable due to the specific national context, Liechtenstein is recommended to continue to ensure that the use of part-time judges who are appointed for a limited time only does not compromise the integrity and independence of the judiciary at the Supreme Court and the Constitutional Court.

Apart from the concern expressed in the above recommendation, Liechtenstein is in compliance with this provision of the Convention.

### *(c) Challenges in implementation*

Liechtenstein is **recommended** to continue to ensure that the use of part-time judges who are appointed for a limited time only does not compromise the integrity and independence of the judiciary at the Supreme Court and the Constitutional Court.

### *Paragraph 2 of article 11*

*2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

The Office of the Public Prosecutor is a unified structure headed by the Prosecutor-General and currently staffed with six prosecutors (not including the Prosecutor-General) assisted by five secretarial staff. Prosecutors constitute a group of public officials separate from the judiciary and subject to a specific legal framework. The Prosecution Service Act (**PSA**), LGBl. 2011 no 49, regulates the organisation and functioning of the services, as well as the recruitment, training, employment, supervision, rights and obligations and termination of employment of prosecutors. Under article 4 PSA, prosecutors enjoy independence unless the law provides otherwise; they fulfil their duties autonomously and under their own responsibility (but they are subject to hierarchical authority (see below). The reform of February 2011 strengthened the independence of public prosecutors through various measures (article 8 PSA): a) prohibition for the Government (and subsequently for the Prosecutor-General) to issue instructions on the non-initiation or on the abandonment of charges and proceedings; b) instructions as a rule must be issued in writing; c) a prosecutor can object to an instruction and in case it is confirmed in writing, s/he is taken the case away; d) the law makes it clear that objecting to an instruction does not violate confidentiality. Moreover, anyone can lodge a complaint against a decision, action or

lack of action of a prosecutor (article 21). Due to the limited size of the office, there is no specialisation. The cases are distributed according to a plan of allocation of cases that has to be decreed by the Prosecutor-General on an annual basis (article 10 PSA).

The Prosecutor-General and his deputy are designated by the Government among the prosecutors in exercise. The Prosecutor-General enjoys a life-long tenure. The selection and career system of professional prosecutors is now similar to that for professional judges except for the nomination/appointment stage. Following a public announcement, prosecutors can be recruited by the Government either as candidate-prosecutors (young Liechtenstein nationals who have concluded successfully advanced legal studies or a professional experience as a lawyer; they will follow a three years initial training) or as prosecutors: these are candidate prosecutors who have satisfied the requirements during their initial training, or practitioners from Liechtenstein who have in the past successfully performed functions as a judge or prosecutor, or Austrian and Swiss nationals who have served continuously as a judge or prosecutor for at least five years before their application. Prosecutors and candidate prosecutors are appointed by the Government upon the Prosecutor-General's proposal.

In accordance with article 34 PSA, all confirmed prosecutors enjoy life-long tenure (in the past some prosecutors were appointed for a renewable term of 1 or 2 years); it is still permitted to hire prosecutors on a temporary basis (for a term of up to 3 years, renewable in exceptional circumstances for an additional 2 years' term). The PSA provides for rules on conflicts of interest and disqualification (articles 22-24), the prohibition of gifts (article 40), and incompatibilities analogous to judges (article 41). In addition, prosecutors are also subject to the general requirements applicable to all State personnel.

The administrative supervision (file management, processing time, length of proceedings, and training of staff) of the prosecution services is the responsibility of the Prosecutor-General, who is himself under the general supervision of the Government. Prosecutors are subject to the same rules on the termination of the employment relationship and discipline as judges (articles 50 and 51 PSA refer back to various provisions of the JOA). There is one exception: the PSA does not state that prosecutors are neither removable nor transferable and the PSA enables the Government to terminate the employment relationship with a prosecutor in case of significant service-related or economic reasons such as shortage of funding. The disciplinary judicial authority is the Chair of the Supreme Court; a special panel of three judges to the Supreme Court has then appellate jurisdiction.

The rights and obligations of prosecutors are captured in articles 2 and 36 to 47 PSA (for example see articles 2, 36 and 37 PSA below).

#### Article 2 PSA- Responsibilities of the Office of the Public Prosecutor

In the performance of the duties assigned to it by law or international treaty, the Office of the Public Prosecutor is called upon to safeguard the interests of the State in the administration of justice, especially the administration of criminal justice. In criminal proceedings, it is responsible for public and judicial prosecution.

#### Article 36 PSA - General obligations

1) The prosecutors shall be sworn to loyalty to the State and shall steadfastly observe the Liechtenstein legal order. They shall dedicate themselves fully to service, perform the duties of their office conscientiously, impartially, and disinterestedly, and they shall carry out the matters pending with the Office of the Public Prosecutor as quickly as possible.

2) The prosecutors shall be required to participate in the training of candidate prosecutors and judges and of trainee prosecutors. When instructed by the Prosecutor General, they shall participate especially in the preparation of opinions concerning legislative consultations or in working groups concerning the area of responsibility of the Office of the Public Prosecutor.

3) Both on and off duty, the prosecutors shall conduct themselves irreproachably and shall refrain from doing anything which might diminish trust in the prosecutorial function.

#### Article 37 PSA - Obligation to comply with instructions

Prosecutors shall be required to comply with instructions in accordance with articles 8 and 9.

#### Article 8 PSA - Basic principle

1) The Government may issue the following to the Prosecutor General in writing:

a) general instructions;

b) instructions to act in a specific criminal case; such instructions may not include dropping of charges (§ 22 paragraph 1 StPO), termination of the proceedings (§§ 64, 158 paragraph 2 StPO), abandonment of prosecution due to diversionary measures (Section IIIa of the StPO), withdrawal of an indictment, or waiver of an appeal to the detriment of the accused.

2) If written instructions in a specific criminal case pursuant to paragraph 1 are not possible on special grounds, especially due to imminent danger, any instructions issued orally must be confirmed in writing as soon as possible.

3) Only the Prosecutor General may issue written or oral instructions to the prosecutors.

4) Instructions must always be issued and justified with reference to this provision of the Act.

5) The constitutional right of the Reigning Prince to quash initiated investigations shall remain unaffected.

#### Article 9 PSA - Right of remonstrance, protection of conscience, disclosure of instructions

1) A prosecutor who believes an instruction he has received to act in a certain case is unlawful shall notify the Prosecutor General or, if it pertains to the Prosecutor General, the Government; this shall be done before carrying out the instruction, unless the measure cannot be delayed due to imminent danger.

2) If a prosecutor believes an instruction to be unlawful or if he requests an instruction in writing, then the Prosecutor General or, if it pertains to the Prosecutor General, the Government shall issue the instruction in writing or repeat it in writing, otherwise it shall be deemed withdrawn.

3) If a prosecutor is convinced of the unlawfulness or unjustifiability of the conduct requested of him, or if there are other grounds worthy of consideration, the Prosecutor General shall, upon written and sufficiently justified request, relieve the prosecutor of further action in the case, unless the measure cannot be delayed due to imminent danger.

4) The duty of official secrecy is not breached simply by notifying the existence and direction of an instruction to act in a certain case.

For the staff working at the Office of the Public Prosecutor, the relevant provisions of the State Personnel Act apply (see information regarding article 8 of the Convention).

The Liechtenstein Prosecution Service strives to do justice to the constant changes and requirements by engaging in appropriate continuing training. The prosecutors attend several lectures on current legal questions in Liechtenstein and participate in about eight to ten international conferences and continuing education courses each year, such as the

international conference of CARIN (international organization for prosecution and security authorities) in May 2016 on the issue of “The Recognition and Implementation of Alternative Strategies in Targeting the Proceeds of Crime”. Additionally, the Prosecutor-General represents the Liechtenstein Prosecution Service in international bodies and informs the prosecutors about developments abroad. The Liechtenstein Prosecution Service is a member of the International Association of Prosecutors (IAP), the CCPG of the Council of Europe, and regularly takes part in the conferences of these organizations and the regional meetings of prosecution authorities (e.g. the Prosecutor Conference of Eastern Switzerland, the Forum of Public Prosecutors of Austria, the Conference of Swiss Public Prosecutors, etc.). Liechtenstein is also associated with Eurojust and the European Judicial Net-work (EJN) as a third State, and its prosecutors attend the training courses offered by these organizations.

### *(b) Observations on the implementation of the article*

The Office of the Public Prosecutor is headed by the Prosecutor-General and staffed with six prosecutors. The organization and functioning of the Office is regulated in the Prosecution Service Act. The Act also sets out the rights and obligations of prosecutors. Various measures have been taken at the national level to strengthen the Office’s independence, for example through prohibiting the Government to issue instructions on the non-initiation or abandonment of charges and proceedings.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## Article 12. Private sector

### *Paragraphs 1 and 2 of article 12*

*1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.*

*2. Measures to achieve these ends may include, inter alia:*

*(a) Promoting cooperation between law enforcement agencies and relevant private entities;*

*(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;*

*(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;*

*(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;*

*(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;*

*(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.*

*(a) Summary of information relevant to reviewing the implementation of the article*

A central public register - the Commercial Register - is kept in Liechtenstein for the entire country. Registration is generally performed upon application of the subjects required or willing to register. The application consists of the application letter and records required by law or ordinance. The Office of Justice then reviews whether the legal requirements for entry in the register are met.

Whether an entity or corporation must be registered depends, in most cases, on the type of entity and the purpose it pursues. According to article 106 para. 1 of the Persons and Companies Act (*PCA*), entities and corporations as well as autonomous establishments and foundations generally obtain their legal personality only when they are registered in the register. Without being registered, the entity or corporation is not considered to exist legally. However, article 106 para. 2 *PCA* provides several exceptions to this general rule: public establishments and public foundations, and associations whose purpose does not include the engagement in commercial activities, do not need to be registered. Exceptions can be provided by statute as well. Foundations which do not engage in commercial activities and whose purpose does not serve a public benefit do not need to be registered, but can be “deposited” in the register, meaning that the notifications of formation or amendment, respectively, are deposited with the commercial register (article 552 sections 14 and 20 *PCA*). Trusts are not required to be registered.

There are penal consequences for non-registration. A person who is obliged to register an entity or corporation can be fined up to CHF 5,000. If the omission is based on negligence, the maximum amount of the fine is CHF 1,000 (section 65 para. 3 *PCA*). The fine can be imposed multiple times as long as the breach of the law persists or until it is proven that there is no obligation to register the entity or corporation (section 65 para. 4 *PCA*).

Transparency is assisted by the register. Entries in the register are open to the public and available as a partial extract on the Internet page [http://www.oera.li/hrweb/ger/firmensuche\\_afj.htm](http://www.oera.li/hrweb/ger/firmensuche_afj.htm)

For a fee, everyone is entitled to access a full extract from the register concerning a specific legal person. The records and documents underlying the entries can be accessed with a legitimate interest. In the case of certain companies, such as companies limited

by shares or limited liability companies, register files can be accessed even without asserting a legitimate interest. A full extract under the register contains the following information:

- name/firm of the legal entity/trust/company without legal personality
- registry number
- legal nature (i.e. type of legal entity or company without legal personality etc.)
- date of registration or deposition (the latter concerning deposited foundations/trusts)
- date of cancellation or termination (the latter concerning deposited foundations/trusts)
- domicile
- representative office or mailing address
- purpose of the respective legal entity/trust
- for companies limited by shares, establishments and foundations: amount of capital and, where applicable, amount of shares
- remarks (amendments of statutes, notification of a bankruptcy proceeding etc.)
- publication organ
- all organs authorized to represent or to act for or on behalf of the entity etc., such as members of the Board, general manager, auditor, safekeeper of bearer shares (where applicable)

In Liechtenstein, there are no restrictions on participations or the number of accounts for legal persons. With respect to bank accounts, however, financial service providers are required by the Due Diligence Act to determine and verify the identity of the contracting party and any beneficial owners (such as of foundations), to prepare business profiles, and to ensure risk-adequate monitoring of the business relationships entered into. Furthermore, the Disclosure Act, in accordance with the EU Transparency Directive (2004/109/EC), governs the transparency obligations of issuers whose securities are admitted to a regulated market in the EEA as well as the disclosure of controlling interests in these issuers. The law covers publications of financial reports and interim reports, information provided to securities holders in order to exercise their rights, and the disclosure of the acquisition and sale of controlling interests.

#### Criminal liability of legal persons

Corporate criminal liability was introduced in 2010 with the articles 74a-74g of the Criminal Code (CC) on top of and independent from the criminal liability of the individual author of the offence.

As for all crimes and misdemeanours, criminal liability is provided when committed for the purposes of the legal person by a person with a leading position (article 74a (1) CC) or committed by a person under its authority based on the lack of supervision or control of such a person in a leading position on the other (article 74a (4) CC). The legal person is liable for offences committed by a person with a leading position if this person acted illegally and culpably (article 74a (1) CC).

Corporate criminal liability does not exclude liability or parallel proceedings which may result from the respective unlawful act (article 74a (5) CC).

The immediate offence must have been committed unlawfully and satisfying the

elements of the offence in the exercise of business activities within the scope of the purpose of the company. When such an offence is committed by a managing person, the legal person is directly criminally responsible. If such a punishable act is committed by employees who are not in a managing position, then the criminal responsibility of the legal person additionally requires that an organisational deficit permitted or facilitated commission of the immediate offence.

A benefit does not have to be realised. It suffices for a corruption offence to have been committed in the course of business activities, i.e. that a functional connection exists between the punishable act and the business activities of the legal person.

The prosecution or punishment of legal persons does not depend on whether the immediate perpetrator can actually be identified, prosecuted or convicted. The legal person would be criminally responsible if it can be shown that one or more managing persons brought about the immediate offence unlawfully and satisfying the elements of the offence, even if it remains uncertain who this concrete person is.

The competence of a court to consider the immediate offence would also provide the basis of competence for the proceedings against suspected legal persons. The proceedings would as a rule be conducted together. On an exceptional basis, proceedings against natural persons and against legal persons could also be conducted separately.

The law provides that punishments imposed on a legal person as well as other legal consequences are transferred to another legal person, namely the legal successor, by way of legal succession. Legal consequences already imposed on the legal predecessor would also apply to the legal successor. Where more than one legal successor exists, an imposed monetary penalty can be executed against every individual legal successor. Other legal consequences can be assigned to individual legal successors to the extent they affect their scope of activity. Private sector bribery offences

The various private sector bribery offences are predicate offences of money laundering under article 165 of the Criminal Code.

#### Article 309 Criminal Code

##### Passive and active bribery in commercial matters

- 1) The employee or agent of a business entity who, in the context of commercial dealings, demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person in return for performing or refraining from performing an act in violation of his/her duties shall be punished by imprisonment of up to two years.
- 2) Shall be punished in the same way whoever offers, promises or grants an advantage to the employee or agent of a business entity, in the context of commercial dealings, for him/herself or a third person, for him or her to perform or refrain from performing an act in violation of his/her duties.
- 3) Whoever commits the act in relation to a benefit in excess of CHF 5 000 shall be punished with imprisonment up to three years, and where the benefit is in excess of CHF 75 000 francs, with imprisonment from six months to five years.

##### Professional disqualification for corruption offences

As regards the leading positions in all legal entities supervised by the FMA, the mandatory licencing criteria require a clean record which proves that the applicant has not been convicted in the past for a serious criminal offence, including serious corruption offences. In case the applicant cannot demonstrate that s/he complies with

the requirement, the application is rejected.

With the extension of the range of corruption offences in the Criminal Code, including the introduction of private corruption offences, a conviction by the court for the commission of such an offence may have the effect of disqualifying the offender from taking a leading position in a legal entity under the requirements of the Commercial Act, LGBI. 2006 no. 184:

Article 9 Commercial Act

Reliability

1) Natural persons are excluded from the exercise of a professional activity if:

a) they have been convicted by a court for fraudulent bankruptcy, harm to third-party creditors, favouring of a creditor or grossly negligent damage to creditors' interests (§§ 156 to 159 of the Criminal Code) or for any other conduct to imprisonment of more than three months or have been sentenced to a fine of more than 180 daily rates and the conviction has not been settled;

#### Cooperation with the private sector

All relevant professional associations for the prevention of money-laundering have quarterly meetings with the FMA and the FIU. Furthermore, there are regular discussions with the management of different financial institutions, Designated Non-Financial Businesses and Professions, the FMA and the FIU. All relevant associations participate actively in legislative processes. According to article 28(3) DDA, the FMA may issue instructions interpreting the provisions of the DDA and the DDO on recommendation of the industry.

Currently there are different working groups, for example on the implementation of the new FATF standard, in which the relevant associations participate (see also information regarding article 14 of the Convention).

In the framework of transposing the 4th EU AMLD, the Liechtenstein authorities are considering the establishment of a centralised register of beneficial ownership of companies and other legal entities. Proposals for such a register have been submitted to the public consultation procedure.

As a general rule, article 182(2) PCA contains the business judgment rule which, inter alia, dictates that all actions taken for a legal entity must be free from any conflict of interest, be to the benefit of the company and be based on adequate information of the relevant circumstances. A breach of this rule can result in a claim of the company, its members (e.g. shareholders) or its creditors for damages against the responsible members of the Board. Furthermore, specific rules regarding due diligence in connection with the management of legal entities with purposes related to asset management, activities in the area of insurances and, in particular, financial intermediaries have been implemented within the scope of the implementation of the EU AML Directives. Moreover, fiduciaries, attorneys, auditors and asset managers are subject to respective codes of conduct; the duty to comply with those codes of conduct is also provided by the law. The issue of insider trading is dealt with in the Banking Law.

With regard to the misuse of subsidies, Liechtenstein complies with the EU regulations on this matter. In addition, the following provision of the Criminal Code is applicable:

Article 153a CC- Misuse of aid

1) Anyone who misuses aid granted to him for purposes other than those for which it was granted shall be punished with imprisonment of up to six months or with a monetary penalty of up to 360 daily rates.

2) Anyone shall likewise be punished in accordance with paragraph 1 who commits the act as a managing employee (§ 309) of a legal person or a company without legal personality to which the aid was granted, or who commits the act without the consent of the recipient of the aid but nonetheless as a managing employee (§ 309) thereof.

3) Anyone who commits the act in relation to an amount exceeding 5,000 francs shall be punished with imprisonment of up to two years or with a monetary penalty of up to 360 daily rates.

4) Anyone who commits the act in relation to an amount exceeding 75,000 francs shall be punished with imprisonment of six months to five years.

5) Aid shall mean a financial contribution granted for the purpose of pursuing public interests from public budgets, including the general budget of the European Communities and the budgets administered by the European Communities or on their behalf, and for which no adequate monetary consideration is given; financial contributions with the character of a social benefit shall be exempt.

The misuse of licences is not ruled within the PCA, but rather encompasses, for example, breaches of the Business Act (Gewerbegesetz), licences under the Banking Act, the Act on Professional Trustees, the Act on Attorneys, the Asset Management Act, the Insurance Supervisory Act etc. The jurisdiction regarding these breaches lies with the Office of Economic Affairs (regarding the Business Act) or the Financial Market Supervisory Authority (regarding the other listed acts).

According to article 989 para. 1 no. 3 PCA, the Office of Justice must, either ex officio or at the request of a third party, initiate an administrative proceeding and, if need be, impose a fine against anyone who uses a name or a firm for an enterprise not registered with the commercial register that may only be used with a licence without having such licence.

With regard to activities of former public officials, see information provided under article 8 paragraph 5 regarding cooling-off periods.

With regard to accounting and auditing standards in the private sector, representatives of legal entities that are stock companies, limited stock partnerships, private limited companies and European Stock Companies are legally obliged to file the audited annual accounts and the audit report within 12 months after the end of each financial year.

With regard to trusts, anyone intending to offer services under the Trustees Act in Liechtenstein requires an FMA licence as a professional trustee or trust company. The FMA monitors compliance with this licensing requirement and authorized use of the term “professional trustee” or equivalent professional or business term. It follows up on all indications of non-licensed trustee activities or the use of protected terms by non-licensed persons. After granting a licence, the FMA monitors permanent compliance with the licensing conditions. If there are grounds for suspicion that the licensing conditions are no longer met, the FMA initiates supervisory proceedings and seizes the necessary measures. Client protection is thus ensured by monitoring the licensing requirements and the compliance with the licensing conditions. As to the accountability of the trustee for the trust itself, articles 923, 1045 and 1059 of the Persons and Company Act apply. In respect of the funds which are accepted for the establishment of the trust as well as any transfer of funds on behalf of the trust, the same due diligence as for any other financial transaction apply.

The Office of Justice examines whether filed audited annual accounts and audit report comply with the relevant provisions of the law. If there is a breach of these provisions, article 66 of the final part of the PCA applies. With regard to auditing standards, the law provides that the international auditing standards as adopted by the European Directive 2006/43/EC must be applied (article 10a para. 1 Auditors Act).

According to article 196 PCA, auditors must report to the highest organ of companies with legal personality and legal entities equal thereto (this is, in general, the General Assembly) on the result of the business report submitted to the auditor by the board of directors. This report must provide information on whether the annual financial statement and the annual report (where applicable) are compliant with the law and the statutes of the legal entity and whether the auditor recommends approving the financial account (with or without restrictions) or deferring it back to the board if the auditor has not been able to give an opinion on it. If the appointment of an auditor to the company/legal entity is compulsory, the annual financial statement cannot be approved unless there is an auditor's report. Furthermore, auditors and auditing companies are supervised and subject to quality reassurance reviews; the FMA is responsible for both of these tasks. Breaches of those standards lead to disciplinary measures, such as fines up to CHF 50,000 or a temporary or permanent ban of practising as an auditor. In addition, a new law on auditors should be adopted by the end of 2017, establishing a new whistleblowing mechanism for auditors. See also information provided for article 12 paragraph 3 of the Convention.

Cooperation with law enforcement agencies is generally promoted by direct access to the National Police (including the reporting hotline and mailbox). In respect of corruption prevention, please refer to the information provided for article 6 of the Convention regarding the hotline operated by the Anti-Corruption Unit as well as the whistle-blowing mechanism established by the FMA.

In 2015, the crime statistics showed 219 instances where criminal offences which are categorised as belonging to the area of economic crime have been recorded as a basis for investigation/prosecution. (This means that the investigation may be based on several provisions of the Criminal Code. Therefore, 219 is not the number of cases.) 145 of those instances concerned fraud and embezzlement, 6 offences related to bankruptcy, 66 to money laundering offences and 2 to corruption/insider-trading. In the category of "document fraud" there were 20 instances of falsification of documents and 8 related to counterfeiting money or securities. A distinction whether the alleged offence was committed by an individual without any business activities or by an employee of a company is not made in the statistics.

### *(b) Observations on the implementation of the article*

The Persons and Companies Act regulates the registration of entities in the Commercial Register. Liechtenstein is also considering establishing a centralized register of beneficial owners of companies and other entities. The Act contains the so-called 'business judgment rule', according to which all actions taken for a legal entity must be free from conflict of interest and to the benefit of the company. Liechtenstein introduced corporate criminal liability in 2010. Fiduciaries, attorneys, auditors and asset managers are subject to specific codes of conduct.

All entities supervised by the FMA are subject to mandatory licencing. Please see also information provided for article 14 of the Convention.

Auditing and accounting standards are regulated by the EU Directives, the PCA and the Auditors Act. Cooperation with law enforcement agencies is promoted by direct access to the Anti-Corruption Unit, including through the established hotline and mailbox.

It was concluded that Liechtenstein is largely in compliance with its obligations under this provision of the Convention. However, Liechtenstein is recommended to continue to consider the risks posed by, and the transparency of, trusts.

### *(c) Challenges in implementation*

Liechtenstein is **recommended** to continue to consider the risks posed by, and the transparency of, trusts.

### *Paragraph 3 of article 12*

*3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:*

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*
- (d) The entry of liabilities with incorrect identification of their objects;*
- (e) The use of false documents;*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Liechtenstein law requires all legal entities that run a commercial business to register with the Commercial Register and to keep proper books (article 1045 PCA). Legal entities subject to proper accounting rules are required, pursuant to article 1059 PCA, to maintain account books and records for ten years:

#### Article 1045 PCA

##### A. Observance of Accounting Regulations

1) Anyone who has the duty to enter his corporate name or name in the Commercial Register (article 945) and undertakes commercial activities (article 107) shall be required to undertake proper accounting.

2) Companies limited by shares, partnerships limited by shares, private companies limited by shares, general partnerships, and limited partnerships as referred to in article 1063, paragraph 2 shall be required to undertake proper accounting even if they do not undertake commercial activities.

3) Legal entities not required to undertake proper accounting in accordance with paragraphs 1 and 2 shall, taking account of the principles of orderly bookkeeping, maintain records appropriate to the financial circumstances and keep documentary evidence that allows the course of business and the development of assets to be traced, subject to any special legal provisions. Article 1059 shall apply mutatis mutandis to the retention of records and documentary evidence.

#### Article 1046 PCA I. Business records

1) The business records must be such that a specialized third party is able to gain an overview of business transactions and the situation of the undertaking within a reasonable period of time. The origin and execution of business transactions must be traceable.

2) Living language must be used when maintaining business records and other required records. If abbreviations, digits, letters, or symbols are used, their meaning must be unambiguous in a given case.

3) The entries in business records and other required records must be complete, correct, timely, and orderly.

4) An entry or record may not be changed in such a way that the original content can no longer be determined. Changes may also not be made whose nature leaves doubt as to whether they are made at the outset or only later.

#### Article 1058 PCA

##### II. Audit and review requirement

1) The annual financial statement and the consolidated annual financial statement of companies as referred to in article 1063, with the exception of those considered small companies in accordance with article 1064, shall be audited by an auditor or an auditing company (statutory audit). If, pursuant to the provisions of this title, an annual report and a consolidated annual report must be prepared, the auditor or auditing company shall also make an assessment whether or not the annual report is consistent with the annual financial statement and the consolidated annual report is consistent with the consolidated annual financial statement.

2) If undertakings not subject to an audit requirement as referred to in paragraph 1 must prepare an annual financial statement pursuant to the provisions of this title, an auditor or auditing company shall perform a review. If, pursuant to the provisions for such undertakings, an annual report must also be prepared, the auditor or auditing company shall also make an assessment whether or not the annual report is consistent with the annual financial statement.

3) Partnerships must submit the documents referred to in paragraph 2 to a review by an auditor or auditing company only if those documents must be disclosed in accordance with the provisions of this title.

4) The review shall be performed in accordance with the standards to be issued by the competent professional organizations.

#### Article 1059 PCA

##### III. Duty to maintain and retain business records

1) Anyone who is required to undertake proper accounting must retain business records, account records, and business correspondence for a period of ten years.

2) The annual financial statement and, if their preparation is required pursuant to the provisions of this title, the consolidated annual financial statement, the annual report, and the consolidated annual report shall be retained in writing and signed; the other business records, the account records, and the business correspondence may be maintained and

retained in writing, electronically, or in a comparable manner, to the extent conformity with the underlying business transactions is ensured and if they can be made readable at any time. The Government shall provide detailed conditions by ordinance.

3) Business records, account records, and business correspondence retained electronically or in a comparable manner are deemed to have the same probative force as those readable without aids.

4) The retention period shall commence upon the end of the business year in which the last entries were made, account records were created, and business papers were received or sent.

Article 1050 PCA provides for a definition of the term “proper accounting”. According to this provision, accounting must be clear and complete; furthermore, there must be no offsetting of assets and liabilities. Further principles of this term are the principle of caution (principle of lowest value, realisation and imparity), the assumption of the enterprise being continued, the principle of continuity, of essentiality and efficiency. Section 66 of the final part of the PCA regulates the penal consequences for non-compliance with Articles 1045, 1046 and 1058 PCA; based on this provision, fines of up to CHF 5,000 may be imposed.

## VI. Administrative Offences; Infractions (PCA)

### § 66

#### 2. Accounting

1) Anyone who, according to the rules governing accounting, wilfully fails to fulfil the duty to maintain business records or replacement thereof or to retain such records, in addition to business letters and other business correspondence of whatever form, shall be punished by the Court of Justice upon application or ex officio in non-contentious proceedings with an administrative fine of up to 10,000 francs. If the perpetrator acts negligently, the administrative fine shall be up to 5,000 francs.

2) Anyone who wilfully fails to fulfil the duty to disclose or other duties in accordance with the provisions of articles 1122 to 1130 shall be punished by the Office of Justice upon application or ex officio in administrative proceedings with an administrative fine of up to 5,000 francs. If the perpetrator acts negligently, the administrative fine shall be up to 1,000 francs.

2a) Anyone who wilfully fails to fulfil the duty under article 182a, paragraph 2 to make the business records or records and documentary evidence available at the registered office of the legal entity within a reasonable time period shall be punished by the Court of Justice upon application or ex officio in non-contentious proceedings with an administrative fine of up to 5,000 francs. If the perpetrator acts negligently, the administrative fine shall be up to 1,000 francs. This applies mutatis mutandis for the trustee of a trust (article 923, paragraph 1).

3) The administrative fines in accordance with paragraphs 1, 2, and 2a may be repeatedly imposed until either the duties set out in paragraph 1, 2, or 2a are fulfilled or proof is provided that no duty pursuant to paragraph 1, 2, or 2a exists.

4) If the duties set out in paragraph 1, 2, or 2a are not fulfilled in the business operations of a legal entity, the penal provision shall be applied to the directors, authorized agents, liquidators, or members of administrative bodies who have failed to fulfil the duty.

5) If the acts are committed in the business operations of a company without legal personality but with a corporate name, then the penal provision shall be applied to the partner or responsible third party at fault.

6) The right to criminal prosecution is reserved.

7) This provisions shall apply mutatis mutandis if other forms of companies or legal entities permissible under this Act are established.

Section 66 of the PCA concerns anyone who has the duty to maintain business records, but fails to fulfil it. Based on article 1045 PCA, the responsibility for it lies with the respective director (or board of directors) since they are responsible to take care of the entire management for their enterprise or the respective legal entity. In relation to third parties, they have to bear the responsibility for the accuracy of accounting entries. This also applies to possible liability claims against the director(s) under articles 218 et seqq. PCA.

Any internal issues, e.g. sanctioning the person who actually carried out the accounting entry, are a matter of the enterprise or legal entity itself. Since the “maker” of accounting entries is neither registered within the respective excerpt of the commercial register nor (in general) made public on e.g. the respective company’s website, it would be very difficult to track down any potentially responsible person in that regard. However, it is possible to sanction the “maker” in a criminal proceeding if the criminal provisions apply and if the person responsible can be determined; however, this will not exculpate the director in charge who was most likely neglecting his or her own duties when approving false information.

Whilst small proprietorships are not captured by the PCA in detail (there are only regulations regarding the firm of a small proprietorship, see article 1017 and 1041 para. 1 and 2 PCA), trusts are regulated by this law in detail: Articles 897 et seqq. PCA concern the “regular” trust (i.e. the legal relationship between settlor and trustee); article 932a sections 1 et seqq. the trust enterprise. Furthermore, foundations (commonly seen as trusts) are regulated within article 552 sections 1 et seqq. PCA.

Liechtenstein is a State party to the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition and has implemented several EU directives with relevance to the transparency of trusts, as reflected, inter alia, in the following acts and Government ordinances:

- Law of 28 June 2011 concerning specific undertakings for collective investment in transferable securities (UCITSG):

[http://www.regierung.li/media/medienarchiv/951\\_31\\_12\\_04\\_2017\\_en.pdf?t=1](http://www.regierung.li/media/medienarchiv/951_31_12_04_2017_en.pdf?t=1)

- Ordinance of 5 July 2011 concerning specific undertakings for collective investment in transferable securities (UCITSV):

[http://www.regierung.li/media/medienarchiv/951\\_311\\_12\\_04\\_2017\\_en.pdf?t=1](http://www.regierung.li/media/medienarchiv/951_311_12_04_2017_en.pdf?t=1)

- Law of 19 December 2012 concerning the Managers of Alternative Investment Funds (AIFMG)

[http://regierung.gmgnet.li/files/medienarchiv/header/951\\_32\\_01\\_10\\_2016\\_en.pdf?t=2](http://regierung.gmgnet.li/files/medienarchiv/header/951_32_01_10_2016_en.pdf?t=2)

- Ordinance of 22 March 2016 concerning the Managers of Alternative Investment Funds (AIFMV)

[http://regierung.gmgnet.li/files/medienarchiv/header/951\\_321\\_01\\_10\\_2016\\_en.pdf?t=3](http://regierung.gmgnet.li/files/medienarchiv/header/951_321_01_10_2016_en.pdf?t=3)

In 2011, the Liechtenstein Association of Auditors issued binding directives on the independence and the performance of statutory audits in accordance with article 9b

paragraph 6 of the Auditors and Auditing Companies Act, LGBL. 1993 no. 44.

It is to be noted that all entities set up in Liechtenstein that are not commercially active are required to appoint at least one director who is a citizen of the EEA and is in possession of a professional trustee license or an employee of a trustee with a special qualification certificate. As a result, the director of an entity set up for a common-benefit purpose is required to conduct customer due diligence on the person setting up the entity and the beneficial owners, where the two are different, in line with the requirements set out under the Due Diligence Act.

The FMA is responsible for supervising the AML/CFT obligations of professional trustees and trust companies. The DDA gives the FMA the power to demand from persons subject to due diligence requirements (i.e. including professional trustees and trust companies) any information and records it requires to fulfil its supervisory activities for the purposes of the Act. Since professional trustees are required to keep due diligence information, this power can be used to obtain that information. Under article 28, paragraph 1, lit. b and c DDA, the FMA can carry out inspections and extraordinary inspections, and use those inspections to verify that information was available and complete.

As an EEA member, Liechtenstein has to transpose EU accounting rules. In 2015 Directive 2013/34/EU was incorporated into domestic law:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN>

Directive 2013/34/EU introduces new elements and principles related to the preparation of financial statements, both annual and consolidated, and related reports, and to the compliance with new audit requirements to all those companies that are not obliged to adopt the international accounting standard set. It focuses on small and medium-sized entities (SMEs) and pursues the objective of finding the right balance between the need of a transparent financial reporting and the related burden of administrative costs compared to the benefits received. International Financial Reporting Standards (IFRS) Standards as adopted by the EU are a requirement for the consolidated financial statements of all companies whose securities trade in a regulated market and for the consolidated financial statements of all other companies on a voluntary basis. Liechtenstein uses the option under the EU IAS Regulation to:

- Permit IFRS Standards as adopted by the EU in the separate financial statements of companies whose securities trade in a regulated market.
- Permit IFRS Standards as adopted by the EU in both the consolidated and separate financial statements of companies that do not trade in a regulated market.

(There is no stock exchange in Liechtenstein. Domestic companies generally list on the Deutsche Börse or on the SIX Swiss Exchange.)

Liechtenstein does not specifically provide criminal offences for “false accounting” and “using false documents” per se, but the forging and the falsification of documents are punishable by the law (article 223 CC). Furthermore using such documents and applying false accounting in order to financially harm a third person or to impair their legal position can be subsumed under the offences of aggravated fraud (article 147 CC) or deceit (article 108 CC). Penal consequences for these crimes include:

- Forgery/Falsification of documents (article 223 CC): imprisonment of up to one year.

- Aggravated fraud (article 147 para. 1 no. 1 CC): imprisonment of up to three years; if the damage exceeds an amount of CHF 75,000, the offence is to be sanctioned with imprisonment from one up to ten years.
- Deceit (article 108 CC): imprisonment of up to one year.

Potential criminal behaviour in the context of accounting or auditing would most likely be covered by these provisions.

#### *(b) Observations on the implementation of the article*

Entities must register on the Commercial Register and keep proper books and accounting, otherwise they are subject to sanctions set out in the PCA. In addition, criminal provisions on forgery and falsification of documents (article 223 CC), aggravated fraud (article 147 CC) and deceit (article 108 CC) can also apply.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

#### *Paragraph 4 of article 12*

*4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

In tandem with the revision of the Criminal Code that entered into force on 1 June 2016, the relevant provision of the Tax Act (LGBI. 2010 no. 340) has been complemented in order to explicitly exclude the tax deductibility for expenses incurred in connection with offences committed under articles 307, 307a, 307b, 308 and 309 of the Criminal Code, i.e. active and passive bribery, trading in influence and bribery in the private sector (article 47, paragraph 3, lit. k):

Article. 47 Factual tax liability

3) The taxable net income consists, subject to paragraphs 4 and 5, of the totality of income reduced by the expenses incurred for commercial activities. The taxable net income includes in particular:

k) payments in accordance with §§ 307, 307a, 307b, 308 and 309 of the Criminal Code;

#### *(b) Observations on the implementation of the article*

Tax deductibility of expenses that constitute bribes is not allowed in Liechtenstein.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## Article 13. Participation of society

### *Paragraph 1 of article 13*

*1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:*

*(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;*

*(b) Ensuring that the public has effective access to information*

*(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;*

*(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:*

*(i) For respect of the rights or reputations of others;*

*(ii) For the protection of national security or ordre public or of public health or morals.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Liechtenstein traditionally has very well-developed rights of participation of the people. Under the Constitution, the people are able to exercise their rights directly through elections and popular votes. They can launch popular initiatives and initiate referenda to amend laws and the Constitution, to submit a motion of no confidence in the Prince, to abolish the monarchy, to convene the Parliament, and to elect judges in cases of disagreement between the Parliament and the Prince. Depending on the issue, between 1,000 and 1,500 citizens, or in some instances three to four municipalities, can launch an initiative or initiate a referendum.

Without the participation of Parliament, no law may enter into force in Liechtenstein or be declared valid. Similarly, a law requires the assent of the Reigning Prince to become valid.

In the vast majority of cases, the initiative for the enactment or amendment of constitutional provisions and laws originates with the Government. Interested circles including the municipalities are included in the legislative process. Generally, the competent ministry prepares a draft law. In a consultation procedure, the Government then circulates the draft for public comments by the relevant organisations regarding the political, economic, financial, legal and cultural impact. But also persons and organisations not expressly invited to do so may comment on the draft law. In fact,

anybody may comment on a draft law within the timeframe which is publicly announced together with the adoption of the draft law by the Government. The calls for consultations are advertised via press releases. The responses and feedback from the consultation are taken into account by the Government in the Report and Application which is submitted to Parliament together with the revised draft. Parliament considers the Report and Application with knowledge of the consultation results.

Parliament may accept, change, or reject the draft law. For this purpose, two readings and a final vote are held in Parliament. If Parliament adopts a law, the decision is subject to a facultative referendum for a period of 30 days. If 1,000 signatures of eligible voters are collected against the decision by Parliament, a popular vote must be held. This applies not only to laws, but also to financial decisions of Parliament. In the case of constitutional decisions, 1,500 signatures are required for a popular vote.

In addition to the Government, Liechtenstein citizens have the right of initiative. 1,000 eligible voters may submit a legislative initiative in the form of a precisely formulated draft or a general suggestion. Parliament must then consider the initiative in its next session. It may accept or reject a formulated initiative. If Parliament does not adopt a formulated initiative, a popular vote must be held. If Parliament accepts a simple suggestion, it implements the suggestion by enacting, repealing or amending a law.

A popular initiative may also concern a partial or total revision of the Constitution, if 1,500 signatures are gathered. Also in this case, Parliament may either accept or reject the initiative and hold a popular vote.

Of special note is the referendum on international treaties. Every decision of Parliament concerning assent to an international treaty is subject to a popular vote, if Parliament so decides or if 1,500 eligible voters or four municipalities demand a vote within 30 days.

Both instruments, referenda and initiatives, are quite often used. Between 1985 and 2015, there were over 50 popular votes at the national level. Turnout for popular votes is roughly 70 per cent.

Municipal autonomy plays an important role in Liechtenstein. Within their own sphere of competence, the municipal authorities autonomously carry out the business that arises and administer the municipal assets. Citizens have the option of calling a referendum against any decision. As at the national level, the people also have the option of initiative.

Eligible voters in each municipality elect a Municipal Council presided by a Mayor, who carries out his or her function full-time or part-time, depending on the size of the municipality. Elections for Municipal Council and Mayor take place simultaneously in all municipalities every four years. The turnout for Municipal Council elections in 2015 was 78 per cent.

Votes at the municipal level may be held on a variety of issues. Specifically, they may concern changes to municipal regulations or the financing of major infrastructure projects.

The importance of municipalities is also manifested by the fact that every municipality has the constitutional right to secede from Liechtenstein.

Non-governmental organizations (NGOs) may be founded as associations in Liechtenstein and may also be registered as such. They do not require any special recognition by the State. Every association in Liechtenstein has the right to pursue and represent its interests. These include participation in the legislative process within the

framework of the above mentioned consultations. Associations may also exert targeted influence on legislation by launching initiatives and referenda. It is also of note that many associations and accordingly also NGOs receive financial support by the State and the municipalities.

Civil society plays an important role in general in Liechtenstein; the numerous associations are especially significant in this regard. Associations may be freely established in Liechtenstein, as long as their purpose is not unlawful. The State and the municipalities support the establishment of associations by various means, including financially. There are numerous associations engaged in human rights. In this regard, Amnesty International (Liechtenstein) is one of the few associations with a focus on human rights in general. Other associations focus more on specific human rights topics, such as the rights of women, homosexuals, and foreigners. Of special note are NGOs engaged in women's rights, since they are very well organized: 17 different NGOs from Liechtenstein are currently engaged within the Liechtenstein Women's Network. There is no NGO engaged in the field of anti-corruption.

Since 2009, the Office for Foreign Affairs has conducted an annual human rights dialogue with NGOs. About 20 to 30 NGOs involved in human rights usually participate. The goal of the dialogue, which was established pursuant to a recommendation made to Liechtenstein by the Human Rights Council as part of the Universal Periodic Review, is to offer NGOs a platform for exchanging ideas both among themselves and with the Office for Foreign Affairs and for discussing ways to participate in the protection of human rights.

With regard to public information activities that contribute to non-tolerance of corruption, the curricula of Liechtenstein's primary and secondary schools contain targets and activities regarding ethical behaviour, including the rejection of the abuse of a position of influence for personal gain.

For more information regarding the access of public to information, please refer to the response under article 10 of the Convention.

To see the UN eGovernment ranking 2014, please visit: <https://knoema.com/UNEGR2015/un-e-government-ranking-2014?country=1001610-liechtenstein>

### *(b) Observations on the implementation of the article*

Participation of society in public decision-making processes is ensured through elections, popular initiatives and referenda. In addition, anyone may comment on draft laws during the consultation procedures within the legislative process. The curricula of Liechtenstein's primary and secondary schools contain activities regarding ethical behaviour and anti-corruption.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *Paragraph 2 of article 13*

*2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including*

*anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

The specialized Anti-Corruption Unit at the National Police was established by a Government Directive of 4 December 2007 on organisational measures to implement the fight against corruption. It is explicitly entitled to receive directly tips and reports from anyone on possible cases, including through the dedicated hotline and mailbox. The unit is also responsible for organising training and awareness-raising events for the National Administration as well as for local authorities and it has received positive echoes and responses to date. There was also an assumption that the recent cases reported from within the police itself concerning integrity problems could be a consequence of these efforts.

The Code of Conduct explicitly states that the obligation for public officials to report suspicions of corruption and other offences may also be complied with by directly contacting the Anti-Corruption Unit.

If the report concerns allegations of corruption, the head of the Unit directly contacts the Office of the Public Prosecutor (i.e. shortcutting the usual reporting hierarchy within the National Police). The Public Prosecutor's Office then instructs the investigators on the necessary further steps to take. The reported case is not included in the internal police database of open investigations but remains with the Anti-Corruption Unit. To date, no reports of corruption have been made.

The Working Group has decided to raise awareness among the general public of these new reporting tools by instigating the publication of a Government press release on the occasion of the International Anti-Corruption Day of 9 November.

Anonymous reporting by mail to the Anti-Corruption Unit has been available to interested persons under article 55 of the Code of Criminal Procedure, which provides for the possibility to report knowledge of an offence directly to the police, the prosecution services or an investigating judge.

*(b) Observations on the implementation of the article*

Anyone can report corruption directly to the Anti-Corruption Unit, including through the dedicated mailbox and hotline. The Unit organizes various training and awareness-raising activities for the public and the National Administration to promote the whistleblowing regime. During the country visit, the issue of anonymity was raised by one of the reviewing experts as at the moment the hotline and mailbox do not provide for a possibility of anonymous reporting.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## Article 14. Measures to prevent money-laundering

### *Subparagraph 1 (a) of Art. 14*

#### *1. Each State Party shall:*

*(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;*

### *(a) Summary of information relevant to reviewing the implementation of the article*

#### Supervisory Agency

The Financial Market Authority is an integrated and independent supervisory authority. It supervises the financial market participants in the Liechtenstein financial centre. More precisely, the FMA is responsible for the licensing of all financial institutions as well as for professional trustees, qualified directors (article 180a Company Law Act), auditors and patent lawyers. The FMA is in charge of the AML/CFT supervision of all financial institutions as well as all designated non-financial businesses and professions (including lawyers, dealers, real estate agents etc.).

Through its supervisory work, the FMA ensures the stability of the financial market as well as the protection of clients. If supervisory rules are violated, the FMA takes the necessary measures in the interest of client protection and the reputation of the financial centre. When combating abuse, the FMA also deals with cases in which activities subject to a licence are pursued without the appropriate licence.

#### Regulation

The FMA ensures the implementation of international standards and participates in the preparation of financial market laws on behalf of the Government. The FMA advocates sustainable regulation that ensures efficient and effective supervision. To further specify laws and their implementing ordinances, the FMA also issues guidelines and communications.

Pursuant to the Financial Marketing Authority Act, the FMA is responsible for the supervision and execution of the AML/CFT Act, the Due Diligence Act, and the Due Diligence Ordinance.

Pursuant to Article 24 of the DDA, ordinary inspections are carried out by the FMA on an annual basis for financial institutions and every three years for Designated Non-Financial Businesses and Professions.

#### External relations

The FMA is represented in all relevant supervisory organizations at the global and European level. With its recognition as an equivalent supervisory authority, the FMA makes an important contribution to ensuring international market access for Liechtenstein financial intermediaries. At the national level, the FMA maintains close contacts with business and professional associations.

The cooperation with foreign authorities based on article 37 DDA is regarded as special legislation and therefore limits the sharing of information with respect to the DDA/DDO only. However, in addition to article 37 DDA, the FMA is able to share relevant information based on the other sector specific laws (e.g. Banking Act) as well as on the FMA Act if needed.

As corruption offences are included in the list of predicate offences for money laundering, relevant information regarding corruption would be shared based on the DDA.

### FMA Organization

The FMA is an autonomous authority with its own legal personality. It was established as an integrated Financial Market Authority in 2005 based on the FMA Act. The FMA is governed according to the rules and practices of responsible and modern corporate management. The FMA employs around 80 people from Liechtenstein, Switzerland, Austria, Germany and other countries. These employees are not civil servants, their status is governed by the FMA Act (and not the State Personnel Act). The FMA is organised in four supervision divisions:

- Banking Division
- Insurances and Pensions Division
- Securities Division
- Other Financial Intermediaries Division.

### Information on anti-money-laundering regulatory and supervisory regimes

Please find here the English version of the Due Diligence Act (DDA) and the Due Diligence Ordinance (DDO) <<https://www.fma-li.li/en/regulation/anti-money-laundering.html>>

In addition to the DDA and DDO, the FMA has published numerous AML/CFT-related guidelines and sector specific guidance. A full list of the regulatory instruments is available on the FMA website (in German only):

<<https://www.fma-li.li/de/regulierung/geldwaschereibekämpfung/nationale-rechtsgrundlagen.html>>

Please find more detailed information on all regulated and supervised financial market participants on the FMA website with exact facts and figures of the financial market for the last 6 years:

<<https://www.fma-li.li/en/fma/publications/liechtenstein-financial-market.html>>

<<https://www.fma-li.li/en/intermediaries.html>>

Article 3 of the DDA is comprehensive. However, article 4 provides three exemptions from the DDA.

- a) For institutions operating in the area of occupational old age, disability and survivors provisions. This exemption can be applied only if the institution provides the services mentioned under this paragraph and is equipped with the relevant licence (which is granted by the FMA).
- b) Management companies for collective investment schemes if the management company does not keep unit accounts nor issue physical units nor accepts itself any assets. The application of this exemption depends on the type of licenses (granted by the FMA) as well as on the factual circumstances of the business operation which is monitored by the FMA. Based on the requirements of the 4th EU-AML-Directive this exemption has been deleted in the current version of the draft bill.
- c) This exemption provides a “catch-all clause” which foresees that persons subject to due diligence might be exempted from the fulfilment of the DDA-requirements under certain, very strict circumstances. However, since this clause entered into force in 2009 there has not been a single case in Liechtenstein in which this exemption had been applied. Therefore, this exemption can be regarded as “dead law”. Hypothetically, a person subject to due diligence would have to claim and verify the reasons why it should be subject to this exemption.

In general it can be said that the application of the exemptions foreseen in article 4 is limited in practice. Currently the exemption mentioned in paragraph b) is the exemption (in line with the requirements of the 3rd EU-AML-Directive) which is applied most in practice. However, this exemption will be deleted in the new law entering into force in September 2017.

Pursuant to article. 5 (1) (a) and (b) DDA, all persons subject to due diligence are obliged to identify and verify the contracting partner as well as the beneficial owner;

- o Articles 2 (1) (e), 5 (1) (a) and (b), 6 and 7 DDA; and articles 3 and 6-13 DDO are relevant for the customer and beneficial owner identification.
- o A definition of beneficial ownership is stipulated in article 2 (1) (e) DDA and articles 3, 12 and 13 DDO;
- o Articles 6 and 7 DDA and articles 6-13 DDO specify the rules of identification and verification of the contracting party and the beneficial owner.

Pursuant to Article 5(1)(c) and (d) DDA, the persons subject to due diligence have to establish a business profile for every business relationship and they have to monitor the business relationships on a risk-sensitive basis.

Article 5 (2) defines the cases in which due diligence measures must be applied.

Articles 20 and 27-29 DDA set out the record-keeping requirements.

- o According to article 20 DDA, all persons subject to due diligence must document their compliance with the due diligence requirements and the reporting obligation.
- o Record-keeping period: at least 10 years from the end of the relationship or 10 years from the conclusion of the transaction.

- o Articles 27-29 DDO specify the content of the due diligence files, the preparation, safekeeping, access and record-keeping procedures. All due diligence files must be stored in Liechtenstein (article 28(5) DDO).
- Articles 17-19 DDA and article 26 DDO stipulate the reporting of suspicious transactions.

#### Compliance reviews (scope and frequency)

AML/CFT obligations are set out in the DDA and DDO and apply to all financial institutions as well as all DNFBPs.

Pursuant to article 23 DDA, the FMA is the designated supervisor for all categories of financial institutions and DNFBPs for purpose of ensuring compliance with the provisions of the DDA and DDO.

The FMA conducts ordinary as well as extraordinary on-site and off-site inspections. The ordinary inspection cycles for all types of financial institutions and DNFBPs are defined by the FMA-Guideline 2013/2 (see annex).

The FMA applies an ordinary inspection cycle between 1 and 3 years, depending on the type of institution/DNFBP. At the moment, all ordinary inspections are full scope inspections.

In addition to the ordinary inspections, the FMA carries out or has carried out extraordinary inspections based on indications of doubts regarding the fulfilment of the due diligence requirements or if circumstances appear to endanger the reputation of the financial centre.

All inspections are conducted according to the FMA Guideline 2013/2 on due diligence inspections by mandated due diligence auditors and the FMA, using the inspection report template.

Ordinary full scope inspections are carried out on an annual basis for financial institutions and every three years for DNFBPs. The FMA also conducts targeted inspections (e.g. focusing on country risks, individual risk management, PEPs etc.).

For more details please see FMA Guideline 2013/2 on due diligence inspections by mandated due diligence auditors and the FMA.

#### Use of external audit firms for inspections

General information:

In addition to its own inspections, the FMA mandates private audit firms to conduct on-site inspections on behalf of the FMA. The approach is set out in FMA Guideline 2013/2.

Basically, ordinary annual due diligence inspections are carried out by the statutory auditor (article 24(5) DDA). For conducting due diligence audits, accredited auditors pursuant to the sector specific laws can be taken into account only. DNFBPs and insurance intermediaries may submit two nominations for auditors. If appropriate, the FMA mandates one of those proposed auditors to conduct the ordinary due diligence audit on behalf of the FMA.

In Liechtenstein, audit firms and auditors are licensed and supervised by the FMA.

Regarding due diligence inspections of the insurance, banking and securities sector, only accredited auditors pursuant to the sector specific laws are allowed to conduct due diligence inspections. The accreditation of auditors is subject to a licensing process with respect to a special qualification and integrity of the responsible auditors.

All mandated audit firms have to apply the FMA Guideline 2013/2 (“Due Diligence Inspections”) and the sample inspection report provided by the FMA.

In addition, the FMA accompanies a representative proportion of inspections, carried out by mandated audit firms, throughout all sectors to ensure the necessary integrity and quality of those inspections. In particular, while the reports are generally reviewed by the FMA after they have been finalized by the mandated audit firm, a certain percentage of draft reports is usually reviewed by the FMA and discussed with the mandated audit firm even before being finalized. The reason behind this divergent approach are the specific circumstances of an inspection. In case of any difficulties or specifics, the mandated audit firm approaches the FMA proactively and the draft report will then be discussed and amended beforehand according to the FMA’s requirements.

To avoid conflicts of interest, the FMA mandates the audit firms. Therefore, the audit firm is acting on behalf of the FMA and not on behalf of the person subject to due diligence.

It is within the FMA’s discretion as to which audit firm it will mandate. Articles 24(5) and (6) DDA give the FMA the necessary discretion. However, in practice the FMA generally mandates the audit firm that is conducting the entity’s statutory audit.

The accompanied on-site inspections also play an important role when it comes to the mitigation of potential conflicts of interest. Moreover, the FMA leads management discussions with all mandated audit firms on an annual basis in which the relevant inspection reports are discussed in detail. In particular, the FMA usually provides a brief feedback with regard to all ‘well written’ and detailed reports and provides at the same time a comprehensive feedback with regard to the reports which are from the FMA’s point of view worth discussing in further detail. Among others, relevant criteria for reports being discussed in further detail are: the importance of an institute; the problems occurred during the inspection; the number and seriousness of the detected deficiencies; the thoroughness of the report, etc. Irrespective of the fact of having ‘well written’ and ‘unproblematic’ reports, the FMA always discussed in detail the reports of the ‘major players’ of the financial sector. Furthermore, the FMA, together with the Auditors Association, organises at least 2 due diligence trainings per year and 3-4 workshops (briefing/de-briefing workshops) with the mandated audit firms.

#### Banking Supervision:

The external auditors act on behalf of the FMA (article 24 DDA). The external auditors are responsible for the entire audit and are required to report back to the FMA. Nonetheless, the FMA accompanies some of these on-site inspections (approximately 10-20%) to ensure the quality of the inspections. Five audit firms were involved in 2015.

Financial audit firms conduct annual on-site inspections with all banks, investment firms, e-money institutions and payment service providers that are registered in Liechtenstein. In 2016, 18 on-site visits were conducted.

#### Securities Supervision:

All controls regarding the compliance with the DDA and DDO are, as a matter of principle, delegated to the audit firms which are approved and supervised by the FMA (article 24(5) DDA). Nonetheless, the FMA accompanies some of these on-site inspections to ensure the quality of the inspections.

For 2015, a total of 119 inspections were conducted of asset management companies (118) and management companies (1) were conducted by 17 external audit firms on behalf of the FMA.

#### Insurance Supervision:

With regard to insurance companies, due diligence audits including on-site inspections are carried out on an annual basis by auditing companies. In addition, the FMA conducts its own on-site inspections generally every 4 years.

For 2015, audit firms conducted on-site inspections at 20 insurance companies and at 8 insurance intermediaries. In 2015, 8 different audit firms were mandated to conduct due diligence audits at insurance companies and insurance intermediaries.

#### DNFBP Supervision:

In 2015 external audit firms conducted 85 ordinary on-site inspections on behalf of the FMA. 19 of those were accompanied by the FMA. Nine different audit firms were used in 2015.

With regard to insurance intermediaries, due diligence audits including on-site inspections are conducted every three years by auditing companies. In addition, the FMA conducts its own on-site inspections generally every 4 years.

### Know Your Customer (KYC) and Beneficial Owner (BO) Transparency Obligations

All persons subject to due diligence have to identify and verify the beneficial owner (BO) (see article 5(1)(b) DDA) in cases (e.g. establishing a business relationship or conduction an occasional transaction) mentioned in article 5(2) DDA. Verification of the BO has to be conducted on a risk-based basis (article 7 DDA). The definition of BO is stated in article 3 DDO. The new beneficial ownership definition (article 3 DDO) which entered into force in January 2016 addresses a few deficiencies, identified by the IMF and MONEYVAL in 2014. The remaining weakness with respect to the application of comprehensive due diligence measures to all existing customers is being addressed in the current draft law which should enter into force in September 2017.

All records have to be stored (physically or electronically) within Liechtenstein (article 28(5) DDO) and timely access to all competent authorities needs to be granted (article 28(1) DDO). The record keeping period is 10 years (article 20(1) DDA).

Persons subject to due diligence collect the relevant data from their clients. The documents used for verification depend on the level of risk. In all instances there must be at least a signed written statement of the contracting party regarding the BO. In practice, even in a case of low risk all persons subject to due diligence are well documented regarding the BO (e.g. copies of passport, etc.) and are in close contact to the clients.

The FMA is responsible for the supervision and execution of the DDA and DDO. According to article 28 DDA, the FMA has full and unrestricted access to the BO

information. Hence, BO information can be obtained by the FMA through ordinary as well as extraordinary (based on certain circumstances) inspections.

Article 5a FIU Act and article 19a(1) DDA give the FIU full access to all information that reporting entities are obliged to keep a record of under article 20 DDO. This covers all beneficial owner information. When making use of its aforementioned powers the FIU has the right to set out definitive deadlines for the provision of requested information. Generally though, FIU requests are fulfilled swiftly and provided within five to ten business days.

Payment Service Providers are subject to article 3(1)(h) DDA. As such they have to apply due diligence to customers that open an account with them (see article 5(2)(a) DDA). According to article 12 DDA and article 17 DDO, the EU-Regulation 1781/2006 on information on the payer accompanying transfers of funds is directly applicable in Liechtenstein. The same is to be said about the EU-Regulation 2015/847 on information accompanying transfers of funds, which will become applicable in Liechtenstein in autumn 2017.

The regulation, as a European law, has priority. Consequently, article 4 of the regulation must be observed for further details (see links below). This provision specifies which information regarding payer and payee is required.

Regulation 1781/2006: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1781&qid=1480416624863&from=EN>

Regulation 847/2015: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0847&rid=1>

The private sector plays an important role in Liechtenstein as the BO information has to be collected, verified and kept by the persons subject to due diligence (article 3 DDA). All persons subject to due diligence are in close contact with their clients which enables them to collect all relevant data and monitor the business relationships in an appropriate way and if necessary to file a suspicious transaction report within reasonable time.

Currently, persons subject to due diligence applying simplified due diligence under article 10 DDA are exempted from the formal fulfilment (e.g. keeping records regarding BO identification) of the customer due diligence (CDD) measures. Nonetheless, they have to make sure that they have sufficient information which allows 1) a certain level of ongoing monitoring; 2) the detection of cases of enhanced due diligence; and 3) the reporting of suspicious transactions.

Article 10(6) DDA states that the application of simplified due diligence is forbidden in cases of enhanced due diligence (e.g. PEP-business relationships). Therefore, persons subject to due diligence have to reassure themselves on an ongoing basis if the requirements of article 10 DDA are still met when applying simplified due diligence in an ongoing business relationship.

Checking the compliance with the requirements set out in article 10 DDA is a statutory part of the ordinary inspections (see also sample inspection report). During an inspection, the persons subject to due diligence have to provide the FMA, respectively the mandated audit firm, with a list of simplified due diligence relationships. Spot checks are carried out on a certain number of these relationships to make sure that the requirements of article 10 DDA are met.

## Politically Exposed Persons (PEPs)

Currently, domestic PEPs are not regarded as PEPs by Liechtenstein law (see PEP-definition in article 2(1)h DDA). However, persons subject to due diligence apply a risk-based approach also in this regard what means that they consider – if necessary - domestic PEPs as PEPs and apply enhanced due diligence.

The transposition of the 4<sup>th</sup> EU AML Directive (2015/849) into national law will address this issue. Therefore, beginning from September 2017 domestic PEPs will be regarded as PEPs by Liechtenstein law.

## Trusts

Professional trustees and trust companies licensed under the Professional Trustees Act are required to carry out customer due diligence under article 3(1)(k) DDA.

According to articles 54(1)(b) and 55(4) of the Trustees Act, trustees and trust companies can be subject to additional controls carried out by the FMA. So far, no additional controls have been carried out.

## Role of the Private Sector

In general, it can be said that the financial institutions/DNFBPs provide sophisticated experience with respect to the offered financial services. They take their role very seriously and provide highly qualified compliance staff which ensures the proper fulfilment of the legal requirements. In addition, they keep their staff up to date through regular specific AML/CFT training. Therefore, the private sector has to be regarded as one of the gate-keepers of the financial system in Liechtenstein.

The professional associations (e.g. banking association, professional trustees association etc.) are well organised, well-staffed and quite active in representing the different sectors e.g. in working groups of the Government, discussions with authorities/officials, etc. They also provide their members with relevant information, know-how and guidance.

The close coordination between the authorities and the representatives of all relevant professional associations facilitates relatively swift reactions to evolving international developments and full implementation of decisions taken on the basis of this inclusive approach.

## Future Developments

Currently, Liechtenstein is in the process of transposing the 4th EU-AML-Directive into national law. The public consultation regarding the draft law took place in summer 2016. The bill was sent to Parliament in early November 2016 and the first reading in Parliament was held in early December (2 December 2016). Second and third readings in Parliament are planned for May 2017. The new law should enter into force in September 2017.

The development of a risk-based approach to supervision is still in progress. It will be completed by the end of 2017.

The bill and the Government report which were submitted to Parliament are available

here: <http://www.llv.li/files/srk/bua-159-2016-web.pdf>

The 4th EU-AML-Directive: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&qid=1484806210201&from=DE>

#### Other Evaluations

In 2002, 2007 and 2013/2014 (joint evaluation Moneyval/IMF), the International Monetary Fund (IMF) and Moneyval assessed to what extent the Liechtenstein AML/CFT provisions meet the FATF standards (FATF 40+9 Recommendations). The IMF and Moneyval attested to Liechtenstein's high standards in combating money laundering and financing of terrorism (see [http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Liechtenstein\\_en.asp](http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Liechtenstein_en.asp)).

Liechtenstein has been an active member of MONEYVAL for many years. MONEYVAL is the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. This FATF-style regional body has the mandate to ensure through mutual assessment of its member states that their AML/CFT measures meet the FATF standards. MONEYVAL is an associated member of the FATF and reports regularly to the FATF.

#### Statistics

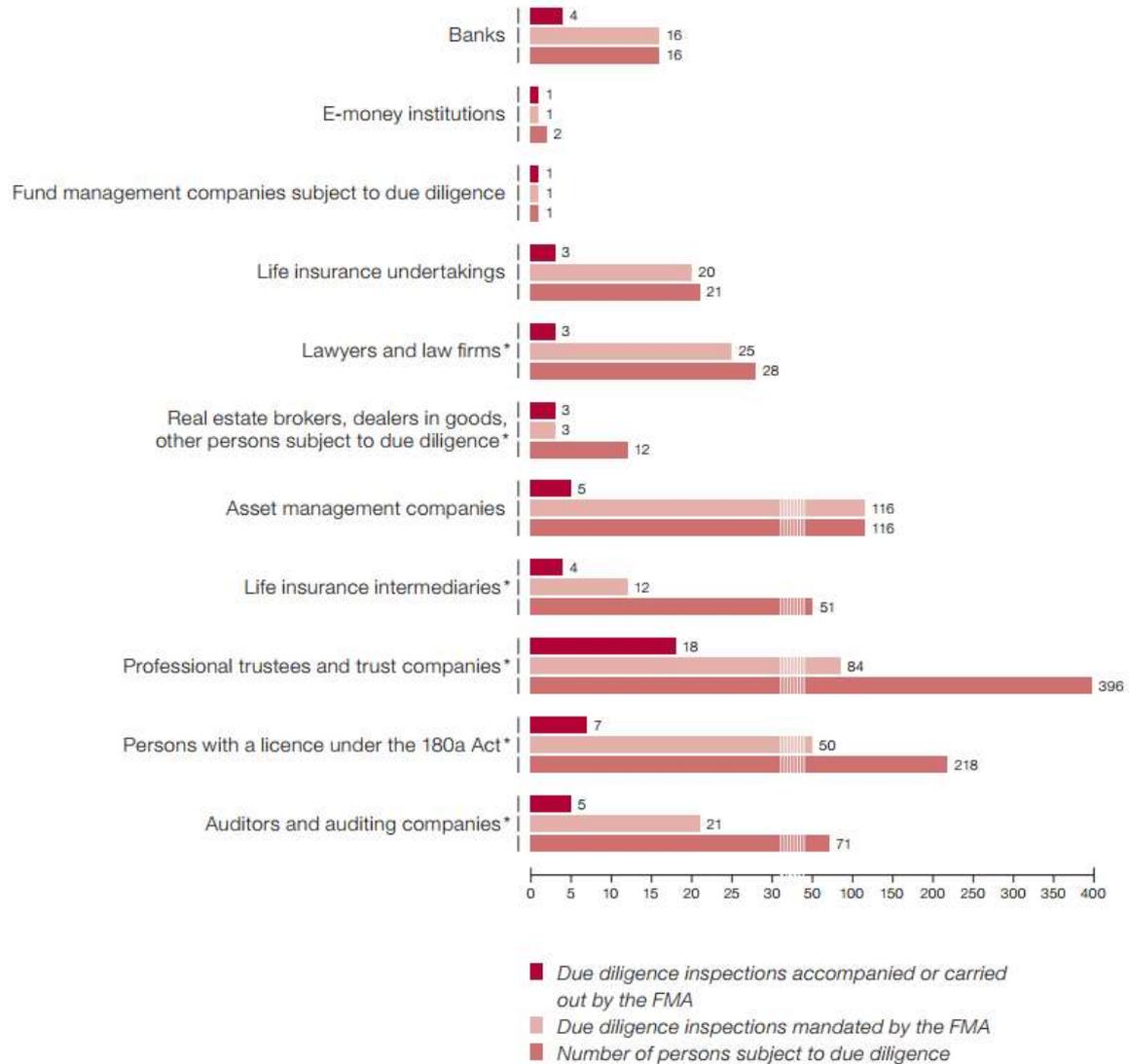
#### Statistics on the relevant sectors and types of institutions or persons subject to the AML/CFT-regime:

Number at end of year	2013	2014	2015
Banks	17 <sup>2</sup>	18 <sup>3</sup>	17 <sup>2</sup>
Post	1	1	1
Agents of foreign PI in LI	1	1	1
E-Money Institution	1	1	1
Fund management companies	2	2	1
Administrator (AIFMG)	0	5	0
Asset management companies	119	121	118
Life insurance companies	22	22	21
Life insurance intermediaries	53	49	55
<b>Total Financial Institutions</b>	<b>216</b>	<b>220</b>	<b>216</b>
Lawyers and law firms	32	59	32
Professional trustees and trust companies	366	382	382
Auditors and audit companies	65	67	69
Qualified company directors (Art. 180a PGR)	518	230	226
Real estate brokers	1	1	0
Dealers in goods (above CHF 15'000)	4	0	3
Others	31	11	12

<sup>2</sup> including one bank in liquidation

<sup>3</sup> including one bank in liquidation and one investment firm

### AML/CFT specific on-site inspections conducted in 2016



*nce inspections*

\*audit every 3 years on behalf of the FMA

### AML/CFT Supervisory on-site visits 2013-2015

2013	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
Banks	17	39	20	0

Post	1	1	1	0
Agents of foreign PI in LI	1	0	0	0
E-Money Institution	1	1	0	0
Fund management companies	2	3	3	0
Asset management companies	119	210	105	0
Life insurance companies	22	50	23	0
Life insurance intermediaries	53	19	12	0
<b>Total Financial Institutions</b>	<b>216</b>	<b>323</b>	<b>164</b>	<b>0</b>
Lawyers and law firms	32	49	59	0
Professional trustees and trust companies	366	148	148	0
Auditors and audit companies	65	28	28	0
Qualified company directors (Art. 180a PGR)	518	160	160	0
Real estate brokers	1	1	1	0
Dealers in goods (above CHF 15'000)	4	1	1	0
Others	31	5	5	0
<b>Total DNFBPs</b>	<b>1017</b>	<b>392</b>	<b>402</b>	<b>0</b>

<b>2014</b>	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
Banks	18	45	20	0
Post	1	1	1	0
Agents of foreign PI in LI	1	0	0	0
E-Money Institution	1	2	1	0
Fund management companies	2	5	3	0
Administrator (AIFMG)	5	0	0	0
Asset management companies	121	215	110	0
Life insurance companies	22	55	24	0
Life insurance intermediaries	49	31	24	0
<b>Total Financial Institutions</b>	<b>220</b>	<b>354</b>	<b>183</b>	<b>0</b>
Lawyers and law firms	59	59	59	0
Professional trustees and trust companies	382	219	219	0
Auditors and audit companies	67	36	36	0
Qualified company directors (Art. 180a PGR)	230	82	82	0
Real estate brokers	1	1	1	0
Dealers in goods (above CHF 15'000)	0	0	0	0
Others	11	13	13	0
<b>Total DNFBPs</b>	<b>750</b>	<b>410</b>	<b>410</b>	<b>0</b>

2015	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
Banks	17	48	23	0
Post	1	0	0	0
Agents of foreign PI in LI	1	0	0	0
E-Money Institution	1	2	1	0
Fund management companies	1	3	2	0
Administrator (AIFMG)	0	0	0	0
Asset management companies	118	240	135	0
Life insurance companies	21	51	23	0
Life insurance intermediaries	55	10	8	0
<b>Total Financial Institutions</b>	<b>216</b>	<b>354</b>	<b>192</b>	<b>0</b>
Lawyers and law firms	32	42	42	0
Professional trustees and trust companies	382	116	116	0
Auditors and audit companies	69	42	42	0
Qualified company directors (Art. 180a PGR)	226	60	60	0
Real estate brokers	0	1	1	0
Dealers in goods (above CHF 15'000)	3	1	1	0
Others	12	16	16	0
<b>Total DNFBPs</b>	<b>724</b>	<b>278</b>	<b>278</b>	<b>0</b>

### Supervisory Actions 2013-2015 imposed for breaches of the DDA/DDO:

2013	Total number of AML/CFT specific inspections	Order to establish a lawful situation	Increase of audit frequency	Administrative fines	Criminal complaint to Public Prosecutor	Fines applied by Court	Diversion	Public disclosure of supervisory sanction or measure	Temporary ban from establishing new business relationships	Temporary ban from exercising functions	Disciplinary measures	Withdrawal of license	Denial of fit and proper requirements	Other measures
Banks	20	3	0	0	0	0	0	0	0	0	0	0	0	0
Post	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Agents of foreign PI in LI	0	0	0	0	0	0	0	0	0	0	0	0	0	0
E-Money Institution	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Fund management companies	3	0	0	0	0	0	0	0	0	0	0	0	0	0
Asset management companies	105	0	0	0	0	0	0	0	0	0	0	0	0	0
Life insurance companies	23	8	0	1	0	0	0	0	0	0	0	0	0	0
Life insurance intermediaries	12	1	2	1	0	0	0	0	0	0	0	0	0	0
<b>Total Financial Institutions</b>	<b>164</b>	<b>9</b>	<b>2</b>	<b>2</b>	<b>0</b>									
Lawyers and law firms	59	1	0	1	1	0	0	0	0	0	0	0	0	0
Professional trustees and trust companies	148	1	4	2	1	0	0	0	0	0	0	0	0	1
Auditors and audit companies	28	0	5	0	0	0	0	0	0	0	0	0	0	0
Qualified company directors (Art. 180a PGR)	160	2	3	4	1	0	0	0	1	0	0	0	0	2
Real estate brokers	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Dealers in goods (above CHF 15'000)	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Others	5	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total DNFBPs</b>	<b>402</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>7</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>

<b>2014</b>	Total number of AML/CFT specific inspections	Order to establish a lawful situation	Increase of audit frequency	Administrative fines	Criminal complaint to Public Prosecutor	Fines applied by Court	Diversion	Public disclosure of supervisory sanction or measure	Temporary ban from establishing new business relationships	Temporary ban from exercising functions	Disciplinary measures	Withdrawal of license	Denial of fit and proper requirements	Other measures
Banks	20	0	0	0	0	0	0	0	0	0	0	0	0	0
Post	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Agents of foreign PI in LI	0	0	0	0	0	0	0	0	0	0	0	0	0	0
E-Money Institution	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Fund management companies	3	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrator (AIFMG)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Asset management companies	110	0	0	0	0	0	0	0	0	0	0	0	0	0
Life insurance companies	24	8	2	0	0	0	0	0	1	0	0	0	0	0
Life insurance intermediaries	24	4	1	0	1	0	0	0	0	0	0	0	0	0
<b>Total Financial Institutions</b>	<b>183</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Lawyers and law firms	59	0	0	0	0	0	0	0	0	0	0	0	0	0
Professional trustees and trust companies	219	0	2	3	8	0	0	0	0	0	0	0	8	4
Auditors and audit companies	36	0	0	0	0	0	0	0	0	0	0	0	0	0
Qualified company directors (Art. 180a PGR)	82	0	0	0	1	0	0	0	0	0	0	0	1	2
Real estate brokers	1	0	0	0	0	0	0	0	0	0	0	0	0	0

Dealers in goods (above CHF 15'000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Others	13	0	0	0	4	0	0	0	0	0	0	0	0	1
<b>Total DNFBPs</b>	<b>410</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>9</b>	<b>7</b>						

<b>2015</b>	Total number of AML/CFT specific inspections	Order to establish a lawful situation	Increase of audit frequency	Administrative fines	Criminal complaint to Public Prosecutor	Fines applied by Court	Diversion	Public disclosure of supervisory sanction or measure	Temporary ban from establishing new business relationships	Temporary ban from exercising functions	Disciplinary measures	Withdrawal of license	Denial of fit and proper requirements	Other measures
Banks	23	0	0	0	3	0	0	0	0	0	0	0	0	3
Post	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Agents of foreign PI in LI	0	0	0	0	0	0	0	0	0	0	0	0	0	0
E-Money Institution	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Fund management companies	2	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrator (AIFMG)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Asset management companies	135	0	0	0	0	0	0	0	0	0	0	0	0	0
Life insurance companies	23	8	1	0	0	0	0	0	0	0	0	0	0	0
Life insurance intermediaries	8	0	0	1	1	0	0	0	0	0	0	0	0	0
<b>Total Financial Institutions</b>	<b>192</b>	<b>8</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>
Lawyers and law firms	42	0	0	0	0	0	0	0	0	0	0	0	0	0
Professional trustees and trust companies	116	1	0	4	2	0	2	0	0	0	0	0	1	3
Auditors and audit companies	42	0	0	0	0	0	0	0	0	0	0	0	4	0
Qualified company directors (Art. 180a PGR)	60	1	0	1	1	0	0	0	0	0	0	0	2	0
Real estate brokers	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Dealers in goods (above CHF 15'000)	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Others	16	0	2	1	3	2	0	0	0	0	0	0	0	5
<b>Total DNFBPs</b>	<b>278</b>	<b>2</b>	<b>2</b>	<b>6</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>8</b>

*(b) Observations on the implementation of the article*

Liechtenstein has a very comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, with the Due Diligence Act (the Liechtenstein AML/CFT Act) and the Financial Market Authority (FMA) as its cornerstones.

The FMA was established in 2005 as an integrated and independent supervisory

authority. The FMA is the sole supervisor in Liechtenstein which ensures a constant, effective and efficient supervision of the financial market. The FMA is represented in all relevant supervisory organizations at the global and European level which makes an important contribution to ensuring international market access for Liechtenstein financial intermediaries. Currently the FMA has sufficient resources - human, financial as well as technical - to fulfil its supervisory tasks. Therefore, the supervisory regime in Liechtenstein can be considered suitable for Liechtenstein's context.

However, the reviewers considered that, while the FMA's appointment of private audit firms to conduct audits on its behalf produces benefits in ensuring that more audits are conducted, the fact that the audit firms are, in practice, nominated and paid for by the entities under supervision (which invariably are the firms chosen by those entities as their statutory auditors) could increase the risk of a conflict of interest. Therefore, the reviewers considered that the FMA should revise the nomination process and only appoint audit firms that are not the statutory auditors of the entities being audited.

Moreover, Liechtenstein was encouraged to give particular consideration to the risks posed by, and the transparency of, trusts while developing its risk-based framework for supervision, particularly given that Liechtenstein is a financial centre.

It was concluded that Liechtenstein is largely in compliance with its obligations under this provision of the Convention. However, it was recommended that the Liechtenstein FMA revise the process by which audit firms are mandated to undertake AML/CTF supervisory inspections to ensure that the audit firm that is the statutory auditor of the entity under supervision is not also conducting the AML/CTF inspection.

### *(c) Successes and good practices*

Liechtenstein has a very comprehensive domestic AML/CFT regime with annual audits.

### *(d) Challenges in implementation*

It is **recommended** that the Liechtenstein FMA conduct a larger proportion of inspections itself and strengthen the measures to mitigate the risk of conflicts of interest in mandated audit firms, possibly by requiring that anti-money-laundering audits and statutory audits not be carried out by the same audit firm.

## *Subparagraph 1 (b) of Art. 14*

*1. Each State Party shall: ...*

*(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.*

*(a) Summary of information relevant to reviewing the implementation of the article*

The Liechtenstein Financial Intelligence Unit (FIU) was established on 1 March 2001. On 1 March 2016 the revised FIU Act (FIUA) came into force, broadening the FIU's powers to request for additional information from reporting entities. These powers can be equally applied when foreign requests by partner FIUs are sent to the FIU. The FIU regularly exercises these powers and exchanges such information internationally when requested.

The FIU is operationally fully independent (article 3(2) FIUA) and has its own budget. For further information on the FIU, also refer to article 58 FIUA.

Liechtenstein has set up a AML/CFT Working Group ("PROTÉGÉ") that is responsible to coordinate all AML/CFT related activities. It is also mandated to coordinate operational activities, including such related to corruption. The AML/CFT Working Group is chaired by the Director of the FIU and meets 4-6 times a year. PROTEGE's Chair reports to the Prime Minister and the Minister of Foreign Affairs every 3 months on PROTEGE's activities.

Consultation between competent authorities, the financial sector, and other sectors is mandatory for every regulation and law drafting. There is a practice that also guidance papers are disseminated for comments prior to publication. Also, the Chair of the AML/CFT Working Group regularly meets with the chairs of the professional associations to brief them on recent developments. The meetings with the professional associations are held about every two to three months, depending on the concrete needs. Topics discussed include the discussion of draft laws, guidance papers, strategic developments and related AML/CFT issues. The chair also attends the meetings where the prime minister invites all chairs of the professional associations.

No professional secrecy laws prohibit the disclosure of information to the FIU by any reporting entity except for professional client privilege situations in relation to lawyers.

Aside from the restrictions listed in article 6(2) FIUA (see below), there are no other legal restrictions on the FIU's ability to share domestically pertinent information on money laundering and terrorist financing activities with law enforcement agencies other than the rules for information exchange under the Egmont Group's Principles of information exchange, such as the prior-consent-regime regarding the provision of intelligence gathered by a foreign counterpart to domestic counterparts.

In addition, the Prosecutor-General, the Director of the FIU, the CEO of the FMA, the Head of the National Police, and the Directors of the Foreign Office, the Tax Administration and the Office for International Financial Affairs meet on a quarterly basis, to inform each other on current developments (ERFAG-Group).

Due to the smallness of the country, all relevant decision takers meet regularly, sometimes weekly, to discuss operational matters.

The FIU and the Office of the Public Prosecutor have quarterly meetings to review the disseminated cases and to allow documentation of follow up.

The FIU has issued a general guidance on how suspicious activity reports are to be reported (i.e. what documentation and details these reports are to cover). Furthermore, the annex to the Due Diligence Act provides for a list of potential indicators for

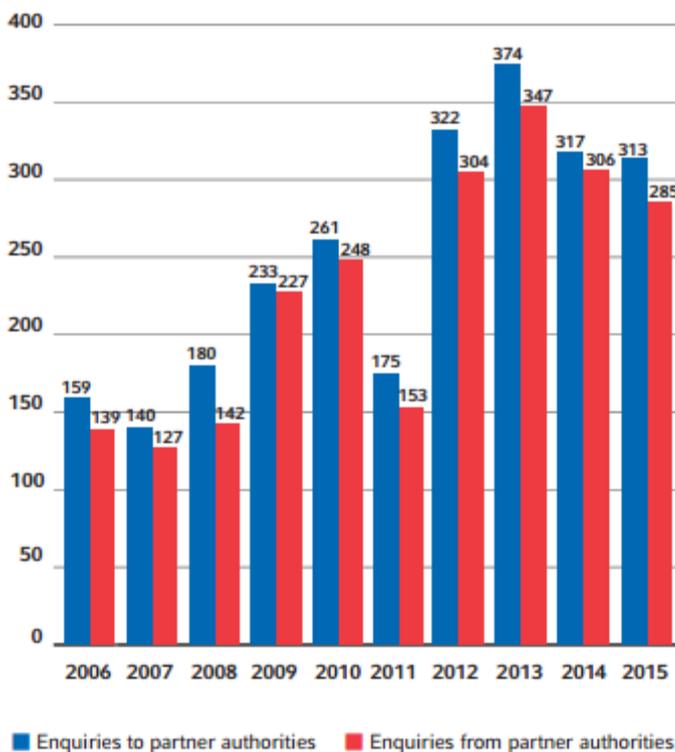
suspicion as guidance. Generally, guidance is regularly provided to reporting entities on a case-by-case basis, either by phone or in face-to-face meeting at the FIU's premises, if needed.

### Cooperation with other FIUs

In cooperating with foreign authorities under article 7 of the FIUA, no Memorandum of Understanding (MoU) between the Liechtenstein FIU and the foreign authority is required in order to be able to exchange information. The FIU has signed a number of MoUs with foreign counterparts upon their request to do so in order to ascertain that a robust and effective mechanism of information exchange is in place.

In response to a request for information from a foreign FIU, the Liechtenstein FIU can obtain information from a reporting entity also without a Suspicious Activity Report having been submitted. The FIU is not restricted in gathering any information it deems necessary to perform its core functions. Everything that can be collected domestically can also be shared internationally (cf. article s 5a FIU-Act and 19a(1) DDA).

#### Enquiries to and from foreign partner authorities



Article 36 DDA and article 6 of the FIUA form the main legal basis for the exchange of relevant information between competent domestic authorities:

#### Article 36 DDA

##### Cooperation between domestic authorities

- 1) The domestic authorities, in particular the courts, the Office of the Public Prosecutor, the

FMA, the FIU, the National Police, and other authorities responsible for combating money laundering, organized crime, and terrorist financing are required to provide all information and transmit all records to each other that are necessary for the enforcement of this Act.

2) In proceedings relating to §§ 165, 278 to 278d StGB, the Office of the Public Prosecutor shall inform the FMA and the FIU whenever such proceedings are initiated and discontinued, and the courts shall transmit copies of any judgments rendered in such proceedings. In addition, the persons subject to due diligence that have submitted a report pursuant to Art. 17 shall be informed of the outcome of the corresponding proceedings.

3) In addition, the Office of the Public Prosecutor shall inform the FMA on the initiation and discontinuation of proceedings in connection with Art. 30, and the courts shall transfer copies of any judgments rendered in such proceedings

#### Article 6 FIU Act Cooperation with domestic authorities

1) The FIU may, exchange financial, administrative, and law enforcement information and associated documents necessary to combat money laundering, predicate offences of money laundering, organized crime, and terrorist financing with other domestic authorities, especially the courts, the Office of the Public Prosecutor, the National Police, the Office of Justice, the Fiscal Authority, and the FMA.

2) The FIU may refuse to transmit information and documents as referred to in paragraph 1 if:

- a) the transmission would have a negative impact on ongoing investigations or analyses;
- b) the transmission would be disproportionate to the lawful interests of natural or legal persons;
- c) the information is irrelevant for the purposes for which it was requested; or
- d) the protection of sources in accordance with Art. 11b is at risk.

3) Requesting authorities must provide feedback to the FIU on the use of the information and documents transmitted to them as well as on the results of the investigations or proceedings conducted on the basis of such information and documents.

4) After consulting with the competent Minister, the FIU may conclude arrangements with other domestic authorities on the modalities of cooperation.

Regarding Article 6(2) of the FIU Act, the phrase ‘disproportionate to the lawful interests of natural or legal persons’ has been copied from the 4<sup>th</sup> EU AML-Directive.

The same two acts also contain provisions on the international exchange of information in the fight against money laundering:

#### Article 37 DDA Cooperation with foreign authorities

1) The following provisions shall apply to the extent that cooperation with foreign authorities is not regulated by special legislation.

2) The FMA shall transmit information to a requesting competent foreign financial market supervisory authority which that authority needs to fulfil its supervisory responsibilities if:

- a) the sovereignty, security, public order, or other essential interests of the State are not violated;
- b) the recipient and the persons employed and mandated by the competent authority are subject to a confidentiality requirement equivalent to Art. 23 of the Public Enterprise

Act;

- c) it is guaranteed that the transmitted information is only used to verify compliance with due diligence requirements as referred to in this Act;
  - d) in the case of information originating from abroad, express consent of the authority that transmitted the information has been given and it is guaranteed that the information will only be transmitted for the purposes to which these authorities have consented.
- 3) The FMA may request foreign financial market authorities to transmit information necessary for fulfilment of the responsibilities under this Act. The FMA may forward the information received to competent domestic authorities.
- 4) Information received from foreign authorities may only be used by the competent domestic authorities for the following purposes:
- a) to verify compliance with due diligence requirements;
  - b) to impose sanctions;
  - c) in the framework of administrative proceedings concerning the appeal of decisions of a responsible authority; or
  - d) in the framework of judicial proceedings.

#### Article 7 FIUA Cooperation with foreign authorities

- 1) In connection with the fulfilment of its responsibilities, the FIU may request foreign FIUs to provide information or transmit records if required for the purpose of this Act.
- 2) The provision of official, non-publicly available information by the FIU to foreign FIUs shall be permissible if:
- a) this does not violate the sovereignty, security, public order, or other essential national interests;
  - b) it is guaranteed that the requesting FIU would grant a similar request from Liechtenstein;
  - c) it is guaranteed that the transmitted information is used exclusively for analysis purposes in connection with combating money laundering, predicate offences of money laundering, organized crime, or terrorist financing;
  - d) it is guaranteed that any transmitted information will be shared with third parties only with the consent of the FIU;
  - e) the requesting FIU is subject to official secrecy;
  - f) it is guaranteed that the information is transmitted using secure means of communication;
  - g) the Mutual Legal Assistance Act is not circumvented.
- 3) Information provided in accordance with paragraph 2 must be in the form of a report.

Regarding article 7(2)(a) of the FIUA, a disclosure to a foreign FIU could violate 'essential national interests' if:

- Requests received from foreign counterparts are clearly and solely politically motivated;
- "Fishing expedition" type of requests where no information other than the name of subject is provided.

Both mentioned examples would jeopardize public order (i.e. essential national interest) as complying with such requests would undermine the general rules and procedures in place concerning the rule of law principle and could ultimately undermine the public's trust in government agencies that deal with pieces of information of a highly delicate nature (such as administrative, law enforcement and financial information) should such a case become public at some stage.

In practice, the FIU has never denied a request solely on the basis of this particular provision.

It is noteworthy that Liechtenstein also makes use of Interpol and SIRENE (the national access point to the Schengen Information System central server) channels to exchange information - including on corruption offences. The NCB and SIRENE are located with the National Police so that all information can be compiled and evaluated in a centralized manner. Only one police authority exists in Liechtenstein, namely the National Police.

Based on Chapter V of the Police Act, LGBl. 1989 no. 48, the National Police is authorized to exchange personal data with foreign security agencies and to share all information which does not explicitly require a court order to be collected in Liechtenstein:

#### Article 35 Police Act

##### Principle

- 1) The National Police Force may request the sending of personal data or the institution of official proceedings by foreign security authorities and organizations if this is necessary for the performance of its tasks.
- 2) The National Police Force may provide official assistance to foreign security authorities or organizations under Art. 35a:
  - a) on request if this is necessary for foreign security authorities and organizations for the performance of their tasks within the intendment of Art. 2 and is carried out on a reciprocal basis;
  - b) without being asked if in the individual case this could be important for the recipient for assistance in the avoidance of specific dangers to public safety and order or for the prevention or combating of criminal acts.
- 3) Official assistance must not be given if there are grounds for assuming that:
  - a) through this the public order or other important interests of Liechtenstein could be breached;
  - b) the subject of the facts in question concerns a levy, tax, customs or currency offense;
  - c) interests meriting protection of the person or third party concerned are breached, especially when in the recipient State those rights are violated which are granted by the Convention of 4 November 1950 for the protection of human rights and basic liberties or if adequate data protection according to Art. 8 of the Data Protection Act would not be ensured;
  - d) the security authority or organization making the request will use this information for political, military, religious or racist purposes.
- 4) Personal data which have been communicated to foreign security authorities and

organizations may only be used with the prior consent of the National Police Force for purposes other than those on which the request was based. This must be communicated to the authority making the request. Consent is only to be given when the data would have been communicated also for this purpose.

5) The National Police Force is required to note the reason, content, recipient and time of the communication of the data. The recording may only be used to check the admissibility of the communication.

6) The National Police Force must inform a foreign security authority or organization when personal data which have been communicated were incorrectly or unlawfully processed and are therefore to be corrected or deleted.

#### Article 35a Police Act

##### Nature of official assistance

1) The National Police Force may provide official assistance by:

- a) the communication of personal data including especially sensitive personal data, in particular concerning administrative or criminal prosecutions and sanctions, and personality profiles;
- b) the granting and support of foreign undercover investigations on Liechtenstein territory; c) other measures not requiring a court order.

2) The acquisition of personal data for the purpose of official assistance under Para. 1 Subpara. a is only permissible by:

- a) using data which the National Police Force has processed for the performance of its duties;
- b) obtaining information from other offices of the State administration, administrative authorities and the courts;
- c) police interrogations;
- d) observation when this is an important precondition for the effective provision of official assistance.

3) Official assistance as specified in Para. 1 Subpara. b requires the permission of the Chief of Police. It may only be granted when the clarification of the circumstances for the performance of tasks within the intendment of Art. 2 would be impossible or very much more difficult without the planned investigational measure and when reciprocity is assured.

4) Subject to the approval of the Chief of Police, bodies of foreign security authorities may be present during the police interrogation and observation if this is necessary for the performance of their police duties within the intendment of Art. 2. However, these bodies may not carry out any official acts for the State making the request. At a police interrogation, the person in question is to be advised of the presence of a foreign security authority.

#### Article 35b Police Act

##### Reservation

The provisions of the Act on Mutual Assistance in Criminal Matters, international conventions and international obligations are reserved.

The Trilateral Police Cooperation Treaty between Liechtenstein, Switzerland and Austria is also applicable in corruption cases, as is Europol and Interpol, where Liechtenstein is a State Party.

Also to mention here is the Cooperation-Treaty between Liechtenstein and Eurojust, in force since 19 November 2013.

Please refer to chapters II and III of the annual report of the Financial Intelligence Unit: [http://www.fiu.li/images/GzD\\_FIU\\_Jahresbericht\\_2015\\_EN.pdf](http://www.fiu.li/images/GzD_FIU_Jahresbericht_2015_EN.pdf)

## Statistics

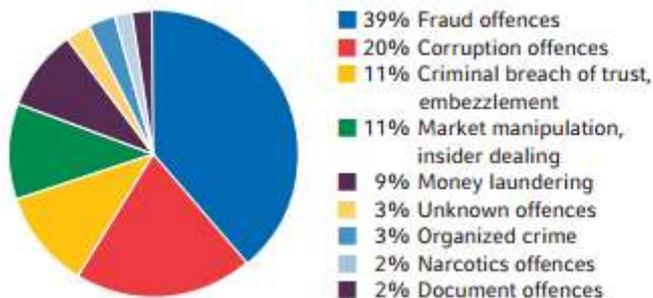
### Suspicious Activity Reports (SARs):

The SARs pursuant to the DDA received by the FIU in the years 2011 to 2015 came from the following sectors:

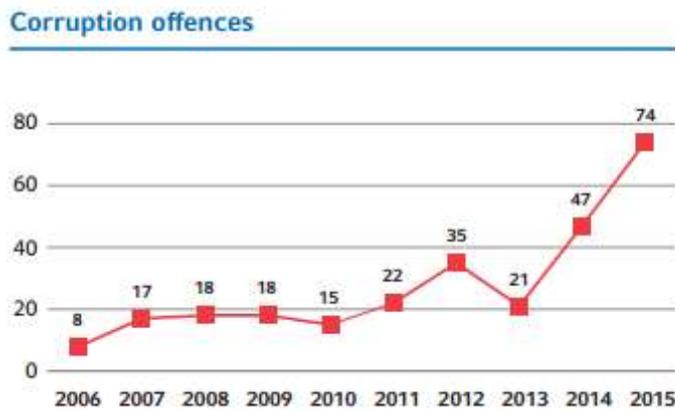
Sector	2011	2012	2013	2014	2015
Banks	126	199	185	192	245
Professional trustees	67	76	51	63	65
Insurers/insurance intermediaries	37	29	16	21	30
Payment service providers (PSPs)	0	0	21	7	12
Public authorities	21	3	10	7	10
Lawyers	5	2	7	6	7
Asset management companies	1	3	1	4	3
Auditors/audit companies	31	5	0	1	3
Dealers in high-value goods/auctioneers/misc.	1	1	1	1	1
Precious metal dealers	0	0	0	1	0
Investment undertakings	0	0	1	0	0
<b>Total:</b>	<b>289</b>	<b>318</b>	<b>293</b>	<b>303</b>	<b>376</b>

### Predicate Offences

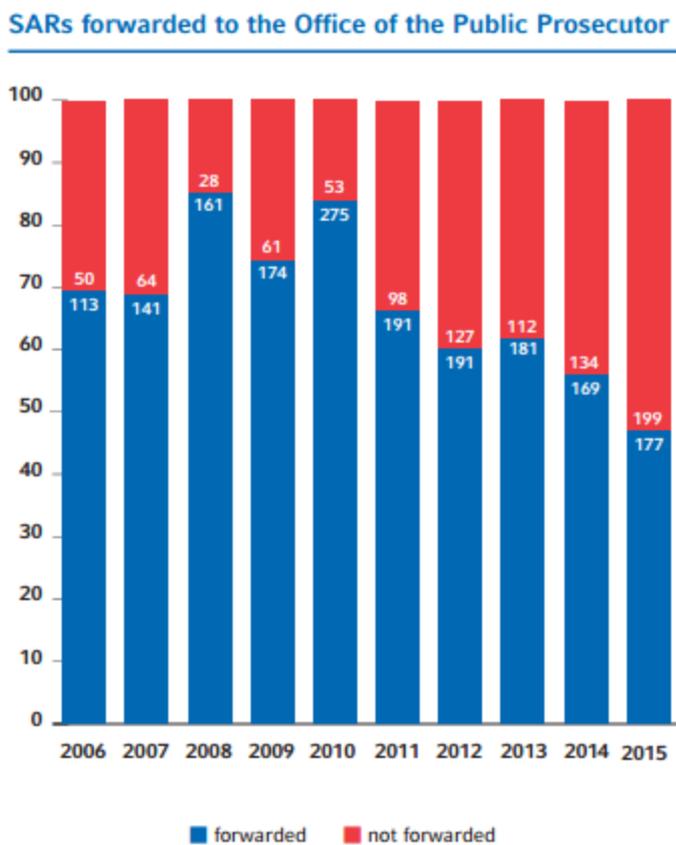
#### Predicate offences



Corruption as a predicate offence:



Follow-up to SARs:



*(b) Observations on the implementation of the article*

During the country visit, it was added that concerning investigations pertaining to foreign bribery and related tax offences (where a bribe was used as a tax deduction), Liechtenstein would – as a State party to UNCAC and UNTOC – cooperate with the relevant authorities of other State Parties to these two conventions on the basis of article 44(16) and 46(22) UNCAC as well as articles 16(15) and 18(22) UNTOC.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*(c) Successes and good practices*

In response to a request for information from a foreign FIU, the Liechtenstein FIU can obtain information from a reporting entity without a Suspicious Activity Report having been submitted. Everything that can be collected domestically can also be shared internationally.

*Paragraph 2 of Art. 14*

*2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Liechtenstein has a disclosure-based system in place to monitor the movement of currency and bearer negotiable instruments across its borders (i.e. travellers must disclose they are carrying cash if questioned).

Liechtenstein introduced the disclosure system in 2011, which, due to delays in its association to the treaty on the Schengen area, became operational in 2013. Since the disclosure system is based on declarations in the case of actual border controls, there is no data on the total amount of transfers of cash (across the border with Austria) available.

The Police Act (article 25e) has introduced cash controls and empowered the National Police to demand from any person information on the origin and intended use of the cash, as well as the beneficial owner, in the case of import, export, and transit information of cash in the amount of at least CHF 10,000 or equivalent in foreign currency.

The definition of “cash” includes also “bearer negotiable instruments.”

Article 25e Police Act

1) To prevent and combat money laundering and terrorist financing, the National Police may -in the context of controlling cross-border cash transactions- demand information of persons concerning the following:

- a) the person questioned;
- b) the import, export, and transit of cash in the amount of at least 10,000 francs or the equivalent in a foreign currency;

- c) the origin and intended use of the cash; and
  - d) the beneficial owner.”
- 2) In case there is a suspicion of money laundering or terrorist financing, the National Police may demand information also if the amount of cash imported into, exported from, or transited through Liechtenstein does not reach the threshold of 10,000 francs or the equivalent in a foreign currency.
  - 3) The National Police may seize cash for the purpose of securing evidence for criminal proceedings as well as in view of expected confiscation in accordance with Art. 25c.
  - 4) The National Police reports immediately all suspicious cases to the FIU and to the prosecution service.
  - 5) The following shall be considered cash:
    - a) Cash in the form of banknotes or coins, irrespective of the currency, provided they are circulated as means of payment; and
    - b) Transferable bearer instruments, stocks, bonds, cheques, and similar securities.”

There is a form that has to be filled and that includes the identification data and the amount/type of currency.

Due to the customs union with Switzerland, the relevant reporting obligations are governed by Swiss law and apply to the border between Liechtenstein and Austria: [http://www.ezv.admin.ch/pdf\\_linker.php?doc=Tares\\_Edelmetallkontrolle](http://www.ezv.admin.ch/pdf_linker.php?doc=Tares_Edelmetallkontrolle)

Based on the framework treaty with Switzerland on police cooperation in the border area, and the associated execution and implementation agreements (2008 and 2012), the National Police has delegated its cash control powers to the Swiss Border Guard Corps (SBGC). Article. 1(c) of the 2012 implementing agreement stipulates that the SBGC is empowered, in application of article 25e of the Police Act, to carry out cash controls along the Liechtenstein border with Austria and to apply the SBGC’s service regulations in that regard.

The National Police also carries out cash controls by themselves (or together in mixed patrols with the Austrian Police). Every cash control where the funds exceed the threshold is required to be noted by the BGC on a control form and transmitted to the National Police. The National Police enters the information in the cash control forms into the police database. Questions arising in the context of international administrative assistance (Interpol, Sirene) are compared with the police database, so that charges can be brought against persons involved in cash controls. Each year, there are between one or two reports/forms from the Swiss Border Guard Corps. Moreover, the National Police carries out at least one cash control per month, approximately 12 per year. All these controls are registered in the police database.

There is a close and good cooperation between the FIU and the National Police and both authorities will share the requested information.

The National Police is empowered to demand information concerning the origin and intended use of cash as well as the beneficial owner (article 25e(1)(c) and (d)). In the case of suspicion of money laundering or terrorist financing, information may also be demanded if the amount of cash does not reach the threshold of CHF 10,000 (article 25e(2)).

Articles 1(c), (2) and (3) of the implementing agreement provide that in the case of a truthful disclosure the control form is transmitted to the National Police (which stores it in a database and might use it as appropriate); whereas in the case of false or lack of disclosure (including when there are suspicions of ML or FT) the National Police must be called in. Since the refusal of information and the false provision of information result in charges filed with the Prosecutor-General's Office.

#### Article 25c Police Act

- 1) The National Police may seize property or assets in order to:
  - a) prevent the commission of a criminal offense;
  - b) avert a risk;
  - c) protect the owner or lawful holder against loss of or damage to the property.
- 2) Property or assets which may be significant for the criminal investigation, or which are subject to forfeiture, confiscation or siphoning-off of enrichment, shall also be seized insofar as such seizure is not permitted to be deferred.

#### Sanctions

Where persons refuse to provide information on cash or provide false information in this regard, the National Police files charges with the Office of the Public Prosecutor for an infraction, based on article 36(c) of the Police Act. The infraction may be punished with CHF 5'000 or an alternative term of imprisonment of up to one month for natural persons. The Court of Justice is responsible for sentencing.

Persons who transport cash or bearer negotiable instruments across the border that are the object of money laundering or terrorist financing incriminate themselves as perpetrators, or abettors of the offenses in question. The penalty for article 278d StGB (terrorist financing) is imprisonment of six months to five years, and the penalty for article 165 StGB (money laundering) is imprisonment of up to three years. If the incriminated sum of money exceeds CHF 75'000 or if the money laundering act is committed as a member of a criminal group, the penalty is imprisonment of up to five years.

#### *(b) Observations on the implementation of the article*

Liechtenstein has a disclosure-based regime to monitor the movement of currency and bearer negotiable instruments across its borders. It was unclear to the reviewers what the monthly cash control operations entailed or the effectiveness of these mechanisms to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.

It was concluded that Liechtenstein is largely in compliance with its obligations under this provision of the Convention.

*Paragraph 3 of Art. 14*

*3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:*

*(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;*

*(b) To maintain such information throughout the payment chain; and*

*(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.*

*(a) Summary of information relevant to reviewing the implementation of the article*

There are currently two agents of foreign money remittance institutions operating in Liechtenstein. With respect to the FMA Guideline 2013/2 money service businesses are inspected on an annual basis.

However, the two money service businesses operating in Liechtenstein are agents of foreign money remittance institutions. Therefore, the home supervisor is responsible for the on-going supervision. Nonetheless, the FMA collects certain data on an annual basis from both institutions and visits them on a frequent basis to ensure the compliance with the legal requirements of the DDA and DDO.

In 2009 Liechtenstein transposed the 3rd EU Anti-Money Laundering Directive into its domestic legislation. Regulation (EU) 1781/2006 on information accompanying transfers of funds, became directly applicable in Liechtenstein through its incorporation into the EEA Agreement. Currently Liechtenstein is in the process of transposing the 4th EU AML Directive (2015/849) as well as Regulation 2015/847 on the information accompanying transfers of funds. Relevant drafts have been approved by Government and submitted to the public consultation procedure. It is foreseen that Parliament will discuss the draft amendments in its session in December 2016. The new legislation should enter into force on 1. September 2017.

All requirements set out in article 14 paragraph 3 UNCAC are covered by the EU Regulation (EU) 1781/2006 and also by the new EU Regulation 2015/847 on the information accompanying transfers of funds.

Regulation (EU) 1781/2006 on information on the payer accompanying transfers of funds is directly applicable in Liechtenstein. The same is to be said about regulation (EU) 2015/847 on information accompanying transfers of funds, which will become applicable in Liechtenstein in autumn 2017. This regulation, as a European law, has priority. Consequently, Article 4 of the Regulation must be observed. This provision specifies which information regarding payer and payee is required.

Currently the name, account number and address of the sender have to be included. The account number can be substituted by an identification number, if needed. The address can be substituted by place and date of birth, a client-number or the national identification number of the sender. The data has to be kept for 10 years after closing an account or execution of an occasional transaction (article 20 (1) DDA).

As mentioned EU Regulations are directly applicable in Liechtenstein once

incorporated into the EEA agreement. Therefore, please find the details of the requirements in the EU Regulation on information accompanying transfers of funds:

EU regulation 2006/1781: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1781&qid=1472806233612&from=DE>>

EU regulation 2015/847: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0847&qid=1472806370344&from=DE>>

The annual full scope inspections of banks also include sample testing of electronic transfers.

According to the inspection reports of the last three years, no relevant or serious breaches in the field of electronic transfers have been identified.

Please refer to the annual reports of the Financial Market Authority: <https://www.fma.li/en/fma/publications/annual-reports.html>

### *(b) Observations on the implementation of the article*

Liechtenstein has a comprehensive regime covering money remitters and the electronic transfer of funds. The two money service businesses operating in Liechtenstein are agents of foreign money remittance institutions. Therefore, their home supervisor is responsible for the on-going supervision. Nonetheless, the FMA collects certain data on an annual basis from both institutions and visits them on a regular basis to ensure the compliance with the legal requirements of the DDA and DDO. To the extent necessary, the Liechtenstein FMA can request the home supervisor for additional information.

It was concluded that Liechtenstein is largely in compliance with its obligations under this provision of the Convention.

### *Paragraph 4 of Art. 14*

*4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Liechtenstein is a member of MONEYVAL, one of the FATF-style Regional Bodies (FSRBs) of the FATF (<<http://www.coe.int/t/dghl/monitoring/moneyval/>>)

Therefore Liechtenstein has to implement and apply the FATF recommendations. In addition to the implementation of the FATF standard, Liechtenstein as a member of the EEA, has to transpose also the EU directives in the field of AML/CFT (see also information regarding article 14(3)).

Currently, Liechtenstein is in the process of transposing the new 4<sup>th</sup> EU AML Directive as well as the new FATF standard.

Liechtenstein is also subject to regular peer reviews led by MONEYVAL. The last full

scope AML/CFT-assessment - jointly lead by the IMF and MONEYVAL- took place in 2014.

In September 2016 Liechtenstein presented to the MONEYVAL Plenary session its progress made since 2014 in this regard.

Liechtenstein plans to leave the regular follow up due to sufficient progress regarding the 2014 IMF/MONEYVAL-recommendations in September 2017.

Please find the Liechtenstein report and the recommended action plan (page 351) here:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/LIE4-MERMONEYVAL\(2014\)2\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/LIE4-MERMONEYVAL(2014)2_en.pdf)

### *(b) Observations on the implementation of the article*

Liechtenstein is a member of MONEYVAL, one of the FSRBs of the FATF and therefore has to implement and apply all FATF recommendations. In addition to the implementation of the FATF standards, Liechtenstein, as a member of the EEA, has to transpose also the EU directives in the field of AML/CFT.

It was concluded that Liechtenstein is largely in compliance with its obligations under this provision of the Convention.

### *Paragraph 5 of Art. 14*

*5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Liechtenstein has been developing and promoting international cooperation to combat money-laundering at many levels and in various fora, such as:

Eurojust (among judicial authorities)

Europol, Interpol (among law enforcement authorities) Egmont Group (among Financial Intelligence Units)

International Organization of Securities Commissions (IOSCO <http://www.iosco.org/>), the International Association of Insurance Supervisors (IAIS <http://www.iaisweb.org/>) the International Organisation of Pension Supervisors (IOPS <http://www.oecd.org/site/iops/>) (among Financial Market Supervisory Authorities).

In addition, the Liechtenstein FIU and FMA have been concluding several bilateral and multilateral MoUs with their counterparts in other countries.

The FIU's Director has chaired the OECDs Anti-Corruption Network (Istanbul Action Plan) for a number of years and has acted as an assessor multiple times, covering a variety of central Asian jurisdictions. In the Egmont Group, the FIU's Director has

chaired the Training Working Group (TWG) for two years and now acts as the Vice-Chair for the new Technical Assistance and Training Working (TATWG) where he is also the project leader for the new Egmont project called “ECOFEL” which aims to provide professional assistance to Egmont members in their technical assistance and training needs. Finally, the FIU Director is currently serving a two-year term as President/Chairman of MONEYVAL. In addition, one staff member has participated in three MONEYVAL assessments and led two projects within Egmont on anti-corruption matters, one of which in collaboration with ICAR (Basel Institute on Governance).

Liechtenstein has also been actively participating in the „Lausanne Process“ on good practices and concrete steps in international cooperation to ensure effective procedures for freezing and returning stolen assets.

Please find information on the Lausanne Process here:

<https://www.admin.ch/gov/en/start/dokumentation/medienmitteilungen.msg-id-60738.html>

### *(b) Observations on the implementation of the article*

Liechtenstein has been extremely active in the development and promotion of global, regional, sub-regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering and return stolen assets.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *(c) Successes and good practices*

Despite its very small size, Liechtenstein has been extremely active in the development and promotion of international cooperation at all levels in order to combat money-laundering and return stolen assets.

## Chapter V. Asset recovery

### Article 51. General provision

*1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

In addition to the information provided regarding articles 14, 52 and 58 on the due diligence obligations of financial intermediaries, and international cooperation of competent authorities, the role of the Financial Intelligence Unit in the detection of suspicious accounts/transactions as well as the planned establishment of a central register of beneficial ownership of companies and other legal entities, it is important to note that Liechtenstein has committed itself to the Automatic Exchange of Tax Information as a member of the so called Early Adopters Group. Liechtenstein has ratified the revised OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters and will implement automatic exchange of financial account information in time to commence exchanges in 2017.

The law on the automatic exchange of financial account information, LGBl. 2015 no. 355, entered into force on 1 January 2016. The information to be collected and exchanged automatically is defined in the Common Reporting Standard (CRS), developed in response to the G20 request and approved by the OECD Council on 15 July 2014. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions: <http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters-9789264216525-en.htm>.

Liechtenstein is a member of the EU's Camden Asset Recovery Interagency Network (CARIN). Liechtenstein's representative as member is one of the three police staff in the Anti-Corruption Unit.

The purpose of the **Lausanne Guidelines** on Asset Recovery, to which Liechtenstein is actively contributing, is to facilitate international cooperation for asset recovery and return in various forms: <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-60738.html>

The Guidelines for the Efficient Recovery of Stolen Assets are a set of international good practices intended to unravel the asset recovery process, breaking it down into practical, manageable guidelines, allowing requesting and requested states to focus on the asset recovery process in a comprehensive manner. They have been developed through the Lausanne process - a series of seminars regularly hosted by Switzerland, in cooperation with the International Centre for Asset Recovery and the Stolen Asset Recovery Initiative, and are recognized as an important instrument to improve international cooperation in the fight against kleptocracy.

In order to consolidate the Guidelines into a user-friendly step-by-step guide, an online tool is being developed. This tool will contain comprehensive information related to the Guidelines and be accessible to the entire asset recovery community. It is intended to maintain the online tool as a living instrument open for contributions (knowledge and experience) and flexible for new trends and improvements in the field of asset recovery.

### Statistics on Mutual Legal Assistance (MLA) Requests

Year	Total no. of MLA requests	Bribery and corruption related MLA requests	Number of bribery and corruption related requests which were inadmissible	Reason for refusal
2012	333	16	2	lack of facts
2013	329	20	1	fishing expedition
2014	362	14	0	--
2015	374	27	4	lack of facts; 1 request withdrawn; 2 still pending
2016	352	18	0	--

### Statistics on all assets frozen and confiscated

2013						
	assets frozen (only domestic, in 2013)		assets confiscated		sharing agreements	
	amount	cases	amount (domestic/foreign)	cases (d/f)	amount	cases
criminal matters	EUR 42.8 Mio	37	EUR 1.4 Mio (EUR 1.4 Mio/0)	2 (2/0)		
civil matters	0	0	EUR 0.1 Mio (0/EUR 0.1 Mio)	1 (0/1)		
total	EUR 42.8 Mio	37	EUR 1.5 Mio (EUR 1.4/0.1 Mio)	3 (2/1)	EUR 0.82 Mio (returned in full)	1

2014						
	assets frozen (only domestic, in 2014)		assets confiscated		sharing agreements	
	amount	cases	amount (d/f)	cases (d/f)	amount	cases

criminal matters	EUR 40.1 Mio	20	EUR 0.6 Mio (EUR 0.26/0.34 Mio)	3 (1/2)		
civil matters	0	0	EUR 15.9 Mio (EUR 15.9 Mio/0)	2 (2/0)		
total	EUR 40.1 Mio	20	EUR 16.5 Mio (EUR 16.16/0.34 Mio)	5 (3/2)	EUR 0.29 Mio (shared 50:50)	2

2015						
	assets frozen (only domestic, in 2015)		assets confiscated		sharing agreements	
	amount	cases	amount (d/f)	cases (d/f)	amount	cases
criminal matters	EUR 121.6 Mio	28	EUR 5.8 Mio (EUR 4.96/0.84 Mio)	4 (1/3)		
civil matters	0	0	EUR 0.7 Mio (EUR 0.7 Mio/0)	4 (4/0)		
total	EUR 121.6 Mio	28	EUR 6.5 Mio (EUR 5.66/0.84 Mio)	8 (5/3)	EUR 0.24 Mio (returned 2/3)	1

### *(b) Observations on the implementation of the article*

Liechtenstein has a comprehensive legal regime for asset recovery. It is one of the very few countries in the world that has actually returned sizable amounts of money (in excess of 200m USD) in relation to corruption offences.

Liechtenstein experts actively participated in the development of the Lausanne guidelines based on their professional experience. As one of the three donors of the International Centre for Asset Recovery, Liechtenstein is also financially contributing to the further operationalization and implementation of the Guidelines.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *(c) Successes and good practices*

Despite its very small size, Liechtenstein has been actively engaged in the development and promotion of international cooperation in order to combat money-laundering and return stolen assets.

## Article 52. Prevention and detection of transfers of proceeds of crime

### *Paragraph 1 of Art. 52*

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value

*accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Pursuant to article 3(1) and (2) DDA all financial institutions as well as all DNFBPs are subject to the DDA and the DDO.

Article 3 DDA

Scope of application

- 1) This Act shall apply to persons subject to due diligence. These are:
  - a) banks and investment firms licensed under the Banking Act;
  - b) e-money institutions licensed under the E-Money Act;
  - c) management companies authorized under the Law on Undertakings for Collective Investment in Transferable Securities or under the Law on Alternative Investment Fund Managers or licensed under the Investment Undertakings Act;<sup>2</sup>
  - d) insurance undertakings licensed under the Insurance Supervision Act, to the extent they offer life insurance;
  - e) the Liechtenstein Postal Service (limited company), to the extent it pursues activities beyond its universal service that must be notified to the FMA;
  - f) exchange offices;
  - g) insurance brokers licensed under the Insurance Mediation Act, to the extent they broker life insurance contracts and other services for investment purposes;
  - h) payment service providers;
  - i) asset management companies licensed under the Asset Management Act;
  - k) professional trustees and trust companies licensed under the Professional Trustees Act, to the extent they pursue activities under Art. 7, paragraph 1 (a), (b), (e) or audit activities under (f) or activities under Art. 7, paragraph 2 of the Professional Trustees Act;<sup>3</sup>
  - l) casinos and providers of online gambling games licensed under the Gambling Act;<sup>4</sup>
  - m) lawyers and law firms entered in the lists of lawyers or lists of law firms under the Lawyers Act as well as legal agents as referred to in Art. 67 of the Lawyers Act, to the extent they provide tax advice to their clients or assist in the planning or execution of transactions for their client concerning the:
    1. buying and selling of undertakings or real estate;
    2. managing of client money, securities or other assets;
    3. opening or management of accounts, custody accounts or safe deposit boxes;
    4. organization of contributions necessary for the creation, operation or management

of legal entities; or

5. establishment of a legal entity on the account of a third party or acting as a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party or carrying out a comparable function on the account of a third party;
- n) natural and legal persons licensed under the Law on Auditors and Auditing Companies as well as audit offices subject to special legislation;
  - o) holders of a certification under Art. 180a of the Law on Persons and Companies (PGR), to the extent that they act as a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party or carry out a comparable function on the account of a third party;
  - p) real estate agents, to the extent that their activities cover the purchase or sale of real estate;
  - q) natural and legal persons trading in goods on a professional basis, to the extent that payment is made in cash in an amount of 15,000 francs or more, whether the transaction is executed in a single operation or in several operations which appear connected;
  - r) natural and legal persons, to the extent that they provide a registered office, business address, correspondence or administrative address and other related services for a legal entity on a professional basis;
  - s) natural and legal persons, to the extent that they act as a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with EEA law or subject to equivalent international standards, or to the extent that they provide the possibility for another person to carry out that function. The FMA shall issue a list of countries with equivalent regulations;
  - t) natural and legal persons who, on a professional basis and on the account of a third party, act as a partner of a partnership or a governing body or general manager of a legal entity or carry out a comparable function on the account of a third party;
  - u) natural and legal persons who, on a professional basis, accept or keep third-party assets or assist in the acceptance, investment, or transfer of such assets or who, on a professional basis, carry out external statutory and other audits.
  - v) natural and legal persons to the extent they contribute to the planning and execution of financial or real estate transactions for their clients concerning the following:
    1. activities referred to in subparagraph (m) (1) to (4); or
    2. acting as a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party or carrying out a comparable function on the account of a third party.
- 2) Liechtenstein branches of foreign undertakings referred to in paragraph 1 are also deemed persons subject to due diligence, to the extent such branches are permissible. “

The application of a risk-based approach is enshrined in different articles of the DDA: article 5(1)(d) (due diligence measures), article 9 (monitoring); article 7(2) (beneficial owner verification); article 8 (business profile); article 10 (simplified due diligence); and article 11 (enhanced due diligence).

The record keeping requirements are set out in article 20 DDA and articles 27-29 DDO.

- o According to article 20 DDA all persons subject to due diligence must document their compliance with the due diligence requirements and the reporting obligation;
- o Record-keeping period: at least 10 years from the end of the relationship or 10 years from the conclusion of the transaction;
- o Articles 27-29 DDO specify the content of the due diligence files, the preparation, safekeeping, access and record-keeping procedures;
- o all due diligence files must be stored in Liechtenstein (article 28 para 5 DDO).

The CDD-measures are set out in articles 5(1) (a)-(d) and 5(2) DDA and the third party reliance is stipulated in articles 14 DDA and 24 DDO.

Pursuant to article 5(1) (b) and article 7 DDA all persons subject to due diligence must identify and verify the beneficial owner. Beneficial owner is defined in article 2(1)(e) DDA and article 3 DDO. In all instances, beneficial owner means a natural person.

#### Monitoring of high value accounts

Pursuant to article 5(1)(d) the persons subject to due diligence must monitor all business relationships on a risk-sensitive basis.

In addition, article 11(6)(a) DDA foresees enhanced monitoring and more detailed clarifications regarding the background and the purpose of complex structures, complex and unusually large transactions as well as transaction patterns that have no apparent or visible economic or lawful purpose. The persons subject to due diligence have to record the results of the clarifications in writing.

#### PEPs and enhanced CDD measures for PEPs

Article 2(1)(h) DDA and article 2 DDO define what a PEP is. The current legislation applies to foreign PEPs only.

Article 11(4) DDA sets out the enhanced measures regarding PEP-relationships and transactions with PEPs:

Article 11(4):

With regard to business relationships and transactions with politically exposed persons, the persons subject to due diligence must:

- a) employ adequate, risk-based procedures to determine whether the contracting party or the beneficial owner is a politically exposed person or not;
- b) obtain the approval of at least one member of the general management before establishing a business relationship with such a contracting party or beneficial owner or - where a contracting party or a beneficial owner is recognized as a politically exposed person in the context of an existing business relationship - before continuing the business relationship;
- c) each year, obtain the approval of at least one member of the general management in order to continue business relationships with politically exposed persons. “

According to article 11(4) DDO persons subject to due diligence have to employ adequate, risk-based procedures to determine whether the contracting party or beneficial

owner is a PEP or not. Domestic PEPs are part of the individual risk-based approach of the financial institutions and DNFBPs.

Domestic PEPs are not yet covered by the PEP-definition of article 2(1)(h) DDA. As mentioned before, this issue will be addressed under the new law entering into force in September 2017.

In practice PEPs are identified mainly by using commercial databases (e.g. World Check, Factiva etc.), through collecting information from the clients as well as individual researches (e.g. media and internet researches).

In practice, PEP identification has not been identified as a weakness in Liechtenstein's AML/CFT-regime. All supervised entities put a lot of effort in identifying and monitoring PEPs.

During on-site inspections the FMA and the mandated audit firms also conduct spot checks in this regard. That means the clients are checked (spot checks) against commercial databases and internet researches to establish the PEP qualification of the clients.

### Know Your Customer (KYC) and Beneficial Owner (BO) Transparency Obligations

In case of non-face-to-face business relationships persons subject to due diligence have to fulfil the requirements set out in article 11(3) DDA and article 6(3) DDO.

In practice, utility bills are mainly used (in addition to the regular verification documents) for verifying the identity of the client.

The percentage of non-face-to-face business relationships is relatively low in Liechtenstein as nearly all financial institutions/DNFBPs are in close personal contact to their clients which includes face-to-face meetings on a frequent basis.

In circumstances where the identity of the BO cannot be determined, article 5(3) DDA has to be applied. That means that the business relationship may not be established respectively the desired transaction may not be carried out and that a report to the FIU has to be submitted.

For further information on KYC and BO, see above under article 14(1)(a).

The FMA has published numerous AML/CFT-related guidelines and sector specific guidance:

<https://www.fma-li.li/de/regulierung/geldwaschereibekämpfung/nationale-rechtsgrundlagen.html>

#### *(b) Observations on the implementation of the article*

The DDA and DDO provide a comprehensive regime for KYC and BO transparency obligations as well as for the identification of PEPs. While currently domestic PEPs do not fall under the definition in article 2(1)(h) DDA, this issue will be addressed under the new law for the transposition of the 4<sup>th</sup> EU AML Directive, entering into force in

September 2017. It may also be worth noting that the guidance issued by the FMA limits the requirement for EDD to State Level PEPs. In some Countries PEPs below the national level would still pose significant risk.

It was concluded that – although at the time of the country visit Liechtenstein still needed to finalise the transposition of the 4th EU AML Directive into domestic law – Liechtenstein is in compliance with its obligations under this provision of the Convention.

*(d) Challenges in implementation*

Liechtenstein is encouraged to finalize the transposition of the fourth EU anti-money-laundering directive (2015/849) to address the existing gaps in its anti-money-laundering/counter-terrorist financing legislation on domestic politically exposed persons and beneficial ownership registers.

*Subparagraph 2 (a) of Art. 52*

*2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:*

*(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and*

*(a) Summary of information relevant to reviewing the implementation of the article*

In addition to the legal requirements regarding enhanced due diligence measures set out in article 11 DDA and article 23 DDO, the FMA has published a specific Guidance (2013/1) on the application of the risk-based approach. This guidance provides among others examples of risk criteria, requirements regarding the business profile and the monitoring of transactions and the business relationship in case of a higher risk situation. It also contains criteria regarding complex transactions and complex structures. It also refers to the different sector specific guidance published by the FATF.

The FMA Guidance 2013/1 applies to all persons subject to due diligence (financial institutions as well as DNFBPs) and specifies the requirements set out in the law. It was drafted based on the input from the financial sector. However, it also takes into consideration the various FATF Guidance.

Every year the FMA provides between 5-10 regular AML-/CFT-related trainings to the private sector.

Trainings 2015 (with AML/CFT relevance)	Date
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Due Diligence Lecture, Compliance Certificate, University of Liechtenstein	01.04.2015
3rd ICQM Liechtenstein Due Diligence Day	22.04.2015
Due Diligence Lecture, University of Zurich	19.05.2015
Due Diligence Lecture, Master studies, University of Liechtenstein	10.07.2015
Seminar on the amendments of the Due Diligence Ordinance (beneficial owner requirements)	30.11.2015
Specific training for auditors and auditing companies, SAL Schaan	16.11.2015
Due Diligence training with the FMA (icqm), Vaduzer Saal	24.11.2015
Specific training for auditors and auditing companies, SAL Schaan	30.11.2015

*(b) Observations on the implementation of the article*

In addition to the legal requirements regarding enhanced due diligence measures set out in article 11 DDA and article 23 DDO, the FMA has published a specific Guidance (2013/1) on the application of the risk-based approach.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Subparagraph 2 (b) of Art. 52*

*2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:*

...

*(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.*

*(a) Summary of information relevant to reviewing the implementation of the article*

All persons subject to due diligence are kept informed of high-risk persons via electronic FMA newsletter whenever the Government has decided to amend the relevant lists based on decisions of the UN.

All relevant ordinances of the Government publish also the names of the concerned natural and legal persons.

Pursuant to article 11(6)(b) and (7) DDA and article 23 and Annex 2 DDO, persons subject to due diligence also have to apply enhanced due diligence measures regarding business relationships and transactions with persons (contracting party as well as beneficial owner) from high-risk countries. The relevant countries are published in Annex 2 of the DDO. The FMA actively informs via electronic newsletter the financial market participants about every single change of the list.

Please find here more information on the publications and the information of the private sector participants:

<https://www.fma-li.li/de/internationales/global/internationale-sanktionen.html>

### *(b) Observations on the implementation of the article*

All persons subject to due diligence are kept informed of high-risk persons via electronic FMA newsletter whenever the Government has decided to amend the relevant lists based on decisions of the UN.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *Paragraph 3 of Art. 52*

*3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Pursuant to article 20 DDA, all persons subject to due diligence must document their compliance with the DDA and DDO requirements. For that purpose they must keep and maintain due diligence files. Record keeping requirements are exhaustively defined by article 20(1) DDA and article 28 DDO.

Client-related records and receipts shall be kept for at least 10 years from the end of the business relationship or conclusion of the occasional transaction; transaction-related records and receipts shall be kept for at least 10 years from the conclusion of the transaction or from their preparation (article 20(1) DDA).

Pursuant to article 27 DDO the due diligence files shall include:

- the documents and records used to identify and verify the identity of the contracting party and the beneficial owner;
- the business profile;
- the records and documents related to any clarifications;
- records describing transactions and the asset balance;
- any reports made to the FIU.

The due diligence files may be stored in written or electronic form (article 28(2) DDO).

All due diligence files must be stored at a location within Liechtenstein that is accessible at any time (article 28(5) DDO).

The FMA Guidance 2013/2 paragraphs 2.4.2 and 2.4.3 explain breaches of the requirements. However, sanctions are imposed for non-compliance/breaches of the legal requirements set out in the DDA and DDO only. The FMA Guidance is supplementary and provides guidance to the persons subject to due diligence in fulfilling the legal requirements set out in the DDA and DDO.

According to the FMA statistics on AML-CFT-related breaches, no serious breaches regarding the record keeping requirements were detected during the last three years.

The official forms for record-keeping are annexed to the Due Diligence Ordinance: <https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgbldid=2009098000&version=13&signed=n&tab lesel=0>.

### *(b) Observations on the implementation of the article*

Pursuant to article 20 DDA, all persons subject to due diligence must document their compliance with the DDA and DDO requirements. For that purpose they must keep and maintain due diligence files.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *Paragraph 4 of Art. 52*

*4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Shell banks are defined in article 2(1)(g) DDA. Pursuant to article 15(4)(h) of the Banking Act, LGBI. 1992 no. 108, the establishment of banks that have no physical presence and which are not affiliated with a regulated financial group are prohibited in Liechtenstein:

#### Article 15 Banking Act

#### Licencing requirements

- 1) Banks and investment firms shall require a licence issued by the FMA to take up their business activities.
- 2) If a bank or investment firm forms part of a foreign group working in the financial sector, the licence shall only be granted if, in addition to the preconditions set out in articles 18 to 25:

- a) the group is subject to consolidated supervision comparable to Liechtenstein supervision;
  - b) the supervisory authority of the home country does not object to the establishment of a subsidiary.
- 3) When considering the application for a licence, the economic needs of the market may not be taken into account.
- 4) Operation of a domiciliary bank is prohibited. Domiciliary banks are banks that do not maintain a physical presence in the domiciliary country and that are not part of group operating in the financial sector that is subject to appropriate consolidated supervision and is governed by directive 2005/60/EC or equivalent regulation.

Art. 15 Banking Act establishes a requirement for authorization. A bank requires a physical presence within the jurisdiction. To be “physically present” a bank has to have sufficient personnel, infrastructure and organisation in Liechtenstein.

Pursuant to article 13(1) DDA banks may not conduct correspondent banking relationships with shell banks.

Article 13(2) DDA states that they must take appropriate measures to ensure that they do not conduct any business relationships with undertakings allowing shell banks to use their accounts, custody accounts, or safe deposit boxes.

Article 31(1)(h) DDA sets out sanctions for business activity with shell banks.

Supervision of the compliance with article 13 DDA is guaranteed through the annual full scope AML-/CFT inspections of banks.

During the last 3 years no breaches of the requirements set out in article 13 DDA have been detected.

*(b) Observations on the implementation of the article*

Shell banks are defined in article 2(1)(g) DDA. Pursuant to article 15(4) of the Banking Act, the establishment of banks that have no physical presence and which are not affiliated with a regulated financial group are prohibited in Liechtenstein.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 5 of Art. 52*

*5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

There is no asset or financial disclosure system/obligation for elected or public officials in Liechtenstein. While the question has been discussed in the Working Group, Liechtenstein decided against introducing financial disclosure systems.

It should be pointed out, however, that Liechtenstein requires its citizens (including elected or public officials) to declare their world-wide income, assets and liabilities, as well as controls over accounts in their tax declaration. The tax law has a strong sanctions regime (i.e. sanctions from twice the amount of the tax due on the non-reported income and assets to imprisonment of up to six months). During the country visit, Liechtenstein reported to the effect that, where a tax declaration discloses a significant improvement in a taxpayer's financial affairs, the Tax Administration will inquire as to the reason for that improvement. The reviewers considered that this could be an effective measure for preventing and detecting corruption.

### *(b) Observations on the implementation of the article*

During the country visit, Liechtenstein confirmed that before ratifying UNCAC, the Working Group on Corruption Prevention had the mandate to examine all provisions of the Convention on the basis of the existing legislation in order to assess the necessity of complementing that legislation (see information provided in respect of article 5 UNCAC). Article 52(5) was part of that consideration. Accordingly, the issue of financial disclosure systems has been considered. Therefore, the country has satisfied its obligation to consider such measures.

### *Paragraph 6 of Art. 52*

*6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

Any public official with residence in Liechtenstein is subject to tax on his/her worldwide income and wealth. Such income and wealth has to be reported annually to the tax authorities. Sanctions for failure to report range from twice the amount of the tax due on the non-reported income and assets to imprisonment of up to six months.

In view of the obligation for any public official (i.e. not only "appropriate" ones) to report his/her worldwide income and wealth to the tax authorities, the Working Group came to the conclusion that no further measure was necessary for the implementation of this provision.

In the framework of transposing the 4th EU AMLD the Liechtenstein authorities are also considering the establishment of a centralised register of beneficial ownership of companies and other legal entities. Proposals for such a register have been submitted to the public consultation procedure.

Please find the relevant report of the Government under public consultation here:

*(b) Observations on the implementation of the article*

Liechtenstein requires its tax subjects to declare their world-wide income and assets in their tax declaration.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*(c) Successes and good practices*

Liechtenstein has committed itself to the Automatic Exchange of Tax Information as a member of the so called Early Adopters Group. Liechtenstein has ratified the revised OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters and will implement automatic exchange of financial account information in time to commence exchanges in 2017.

## Article 53. Measures for direct recovery of property

*Subparagraph (a) of Art. 53*

*Each State Party shall, in accordance with its domestic law:*

*(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;*

*(a) Summary of information relevant to reviewing the implementation of the article*

Under Liechtenstein law, any State Party has - like any legal person - legal capacity and process capability; therefore, a State Party may initiate civil action in Liechtenstein courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with the Convention. There is no specific mechanism to be used by another State party in order to be recognized as a legal person.

There have not been any cases so far involving corruption offences. Otherwise, it is not unusual for foreign countries or federal states of foreign countries (e.g. the Austrian *Land Salzburg*) to act as plaintiffs in Liechtenstein courts.

*(b) Observations on the implementation of the article*

Liechtenstein law treats foreign countries just like any other legal person. Therefore, they can initiate civil action in Liechtenstein courts.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Subparagraph (b) of Art. 53*

*Each State Party shall, in accordance with its domestic law: ...*

*(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and*

*(a) Summary of information relevant to reviewing the implementation of the article*

As a legal person another State Party may initiate civil action in Liechtenstein courts to order those who have committed offences established in accordance with the Convention to pay compensation for damages.

Under civil law, a contract concluded pursuant to a corruption offence may in principle be contested on grounds of mistake or deceit. Such a contract would be declared null and void, with the consequence that the party in error may apply for compensation (claim arising from unwarranted enrichment, article 877 of the General Civil Code:

Anyone who demands the cancellation of a contract for lack of consent must also renounce everything they have received from such a contract to their advantage.

Moreover, article 57(3)(c) CPC provides for the possibility to grant damages to harmed parties in criminal proceedings.

*(b) Observations on the implementation of the article*

Liechtenstein law treats foreign countries just like any other legal person. Therefore, they can sue for compensation or damages in Liechtenstein courts.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Subparagraph (c) of Art. 53*

*Each State Party shall, in accordance with its domestic law: ...*

*(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Forfeiture is excluded pursuant to Article 20a of the Criminal Code (CC) to the extent that the party concerned has satisfied civil claims arising from the act or has undertaken to do so in enforceable form.

Article 354 of the Criminal Procedure Code (CPC), LGBI. 1988 no. 62, contains

provisions on the rights of uninvolved third parties in criminal proceedings to the extent that they are affected by forfeiture or confiscation; if parties concerned assert their right only after entry into effect of the decision on forfeiture or confiscation, they shall be at liberty to assert their claims to the object or its purchase price (article 253 CPC) within thirty years after the decision vis-à-vis Liechtenstein by way of civil proceedings.

#### Article 20a CC Exclusion of forfeiture

2) Forfeiture shall be excluded furthermore:

...

2. to the extent that the party concerned has satisfied civil claims arising from the act or has undertaken to do so in enforceable form;

#### Article 354 CPC

1) Persons who have a right to the assets or objects threatened by forfeiture or confiscation or assert such a right, who are liable for monetary penalties or the costs of the criminal proceedings, or who, without being accused or indicted themselves, are threatened with forfeiture, or confiscation, shall be summoned to the trial. In the trial and in the subsequent proceedings, they shall have the rights of the accused, to the extent that the proceedings concern the decision on these financial orders. If a summons has been served upon the affected persons, the proceedings may be conducted and decided even in their absence.

2) If the persons referred to in paragraph 1 assert their right only after entry into effect of the decision on forfeiture or confiscation, they shall be at liberty to assert their claims to the object or its purchase price (Article 253 CPC) within thirty years after the decision vis-à-vis the State by way of civil proceedings.

Liechtenstein does not have any specific processes for notifying State Parties that may have a claim to the assets that are the subject of the proceedings. However, in almost all cases there are MLA requests to and from the relevant State party because that State party has knowledge of the assets. Moreover, the FIU could share information spontaneously.

#### *(b) Observations on the implementation of the article*

The rights of other State Parties as legitimate owner of property acquired through the commission of a Convention offence are protected (article 20a CC and article 354 CPC).

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## Article 54. Mechanisms for recovery of property through international cooperation in confiscation

*Subparagraph 1 (a) of Art. 54*

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:*

*(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;*

*(a) Summary of information relevant to reviewing the implementation of the article*

Articles 64 to 67 of the Mutual Legal Assistance Act (MLAA), LGBl. 2000 no. 215, provide the basis for the enforcement of foreign court decisions. Furthermore, the provisions of UNCAC are directly applicable.

Article 64 MLAA

- 1) Enforcement or further enforcement of a decision taken by a foreign court in connection with which a fine or imprisonment, a preventive measure or pecuniary order has been pronounced by a final judgment, is permissible at the request of another State if
  1. the decision of the foreign court has been taken in proceedings that comply with the basic principles of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms,
  2. the decision was taken due to an act which is subject to judicial penalty under Liechtenstein law,
  3. the decision was not taken due to a punishable act set out in articles 14 and 15,
  4. enforceability would not have become time-barred under Liechtenstein law yet,
  5. the person affected by the decision taken by the foreign court is not, due to the offense, prosecuted, convicted or acquitted by a final judgment or if the indictment has been quashed for another reason in Liechtenstein.
- 2) Enforcement of the decision taken by a foreign court in connection with which imprisonment or a preventive measure has been pronounced is only permissible if the convicted person is a Liechtenstein citizen and has his/her residence or abode in Liechtenstein.
- 3) Enforcement of preventive measures is only permissible if Liechtenstein law provides for equivalent measures.
- 4) Enforcement of the decision taken by a foreign court in connection with which pecuniary orders are given is only permissible as far as, under Liechtenstein law, the requirements for a fine or a pecuniary order are provided and a corresponding domestic order has not been issued yet.
- 5) Enforcement of the decision taken by a foreign court in connection with which a fine or forfeiture pursuant to Art. 20 paragraph 3 CC has been pronounced, is only permissible if collection is expected to be in Liechtenstein and the person concerned has been heard provided that he/she could be contacted.
- 6) Enforcement of the decision taken by a foreign court in connection with which confiscation or forfeiture pursuant to Art. 20 paragraph 1 and 2 CC or extended forfeiture

pursuant to Art. 20b CC has been pronounced by a final judgment, is only permissible if the objects or assets subject to the decision are located in Liechtenstein and the person concerned has been heard provided that he/she could be contacted.

7) Fines, forfeited assets and confiscated objects devolve upon the State.

#### Article 65 MLAA Domestic Decision of Enforcement

1) If the enforcement of a decision taken in criminal matters by a foreign court is assumed, the sentence, preventive measure or pecuniary order to be enforced in Liechtenstein shall be determined under Liechtenstein law taking into account the measure pronounced in such decision.

2) The person affected by the decision must not, by the assumption of the enforcement, be put in a less favourable position than by the enforcement in the other State.

3) Article s 38 and 66 CC shall be applied mutatis mutandis.

#### Article 66 MLAA Handling of Requests Received

Requests for the enforcement of decisions taken by foreign criminal courts received by the Ministry of Justice shall be transmitted to the Court of Justice (Art. 67, paragraph 1). If, on receipt of the request, there are any circumstances opposed to the assumption of enforcement for one of the grounds set out in articles 2 and 3, paragraph 1, or if the request is not suitable for legal treatment, the Ministry of Justice must immediately refuse the request. The Ministry of Justice may demand at any one time of the proceedings, on its own account or at the request of the Court of Justice, supplementary documents from the State making the request for assumption of enforcement.

#### Article 67 MLAA Competence and Proceedings

1) The Court of Justice decides on the request for enforcement and adaptation of the sentence, the preventive measure or pecuniary order by adopting a ruling. The Office of the Public Prosecutor and the party affected by the decision may file an appeal with the Court of Appeal within fourteen days.

2) The Ministry of Justice must inform the State making the request about the decision on the request for assumption of enforcement in the form provided for and notify it of the enforcement.

3) After the assumption of enforcement of a sentence or preventive measure, it is no longer permissible to institute criminal proceedings due to the offense underlying the judgment.

#### Article 8a MLAA – Pecuniary order

Pecuniary order means confiscation (Art. 19a CC), forfeiture (articles 20, 20b CC), seizure (Art. 26 CC) and any other penalty, precautionary measure or legal action consisting of the removal of an asset or object which is pronounced after the execution of domestic or foreign criminal proceedings, with the exception of monetary penalties, fines, compensation for private parties and procedural costs.

The crime does not have to be the same crime in Liechtenstein, but it has to be a (any) crime in Liechtenstein (“an act which is subject to judicial penalty under Liechtenstein law”).

There is no need to have a hearing or examination in Liechtenstein; the hearing can also be done by the requesting State before or after the submission of the request.

Data for such statistics (in respect of any criminal offence) is not being collected. In the Abacha case no foreign confiscation order had been received.

*(b) Observations on the implementation of the article*

Foreign court orders for confiscation can be enforced pursuant to article 64 MLAA.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Subparagraph 1 (b) of Art. 54*

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:*

...

*(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and*

*(a) Summary of information relevant to reviewing the implementation of the article*

The criminal judgement of an offence of money-laundering or other offence must include a decision on forfeiture, extended forfeiture or confiscation.

Article 353 CPC

- 1) The criminal judgement shall include a decision on forfeiture, extended forfeiture, confiscation, and other financial orders under supplemental criminal legislation, to the extent this section or other laws do not provide otherwise.
- 2) If the results of the criminal proceedings do not suffice in themselves or upon conducting simple additional enquiries to form a reliable judgement on the financial orders referred to in paragraph 1, then this imposition may by ruling be reserved to a separate decision (§§ 356, 356a), and other than in that case such an order shall no longer be permissible regarding the assets or objects concerned.
- 3) The decision on financial orders shall, except in the case of § 356a, be equivalent to the imposition of the sentence and may be appealed to the advantage and to the disadvantage of the sentenced person or of other persons affected by the order (§ 354).

Article 356 CPC

- 1) If there are sufficient grounds for the assumption that the preconditions for forfeiture

(Article 20 CC), extended forfeiture (Article 20b CC) or confiscation (Article 26 CC) are given, without the possibility of deciding thereon in criminal proceedings or in proceedings aimed at placement in one of the institutions referred to in §§ 21 to 23 CC, then the prosecutor shall file an independent application for the issue of such a financial order.

#### Article 19a CC

##### Confiscation

- 1) Objects used by the perpetrator to commit a deliberate offense which he or she has determined to use in the commission of this offense or which have been produced by this act shall be confiscated if they are in the perpetrator's position at the time of the decision.
- (2) Confiscation is to be dismissed insofar as it is disproportionate to the significance of the act or to the accusation of the perpetrator.

#### Article 20 CC

##### Forfeiture

- 1) The court shall forfeit any assets which have been acquired for the purpose of committing a punishable offense or have been acquired by the offense.
- 2) The forfeiture shall also cover uses and substitute values of the assets to be declared forfeited pursuant to para. 1.
- 3) In as far as the assets subject to forfeiture pursuant to para. 1 or 2 are no longer present or the forfeiture is not possible for another reason, the court shall declare forfeited a cash sum which corresponds to these assets. Subject to the substitute forfeiture are also assets that have been saved through the commission of a punishable offense.
- 4) Insofar as the extent of the assets to be forfeited cannot be determined or can only be determined at a disproportionate cost, the court shall determine the extent according to its estimation.

#### Article 20a CC

##### Exclusion of forfeiture

- 1) The forfeiture in respect of a third party pursuant to article 20 (2) and (3) is excluded insofar as the latter has acquired the assets in ignorance of the offense.
- 2) The forfeiture is also excluded:
  1. against a third party, insofar as the latter has paid for the assets in ignorance of the punishable offense;
  2. to the extent that the person concerned has satisfactorily fulfilled or assured civilian claims;
  3. as far as its effect is achieved by other legal measures.
- 3) The forfeiture shall be excluded as far as:
  1. the asset to be declared forfeited or the prospect of its seizure is out of proportion to the cost of the proceedings required for its forfeiture or seizure; or
  2. the survival of the person concerned would be disproportionately aggravated or it would constitute an unfair hardship for the person concerned.

## Article 20b CC

### Extended forfeiture

- 1) Assets that are provided or collected as a means of terrorist financing (§ 278d) for a criminal organization (§ 278a) or a terrorist group (§ 278b) shall be declared forfeited.
- 2) If a crime has been committed, for whose commission or by which the assets were obtained, also those assets are forfeited which were acquired in a temporal connection with this act, provided that it is presumed that they originate from an unlawful act and that their legitimate origin cannot be made credible.
- 3) If continued or recurring misdemeanours pursuant to §§ 165, 278, 278c and 304 to 309 have been committed, for whose commission or by which the assets were acquired, also those assets are forfeited which were acquired in a temporal connection with these acts, provided that it is presumed that they originate in further misdemeanours of this type and that their legitimate origin cannot be made credible.
- 4) Article 20 (2) to (4) shall apply mutatis mutandis.

## Article 26 CC

### Preventive Confiscation

- 1) Objects which the perpetrator used to commit the act carrying a penalty, or which he designated for use in the commission of the act, or which have arisen from this act shall be confiscated if these objects endanger the safety of persons, morality, or the public order.

...

### *(b) Observations on the implementation of the article*

Liechtenstein has a comprehensive legal regime for confiscation.

Article 19a CC allows the confiscation of instrumentalities as an additional punishment. Article 26 CC provides for preventive confiscation of instrumentalities also without conviction if these objects endanger the safety of persons, morality, or the public order. The confiscation of proceeds of crime is governed by Article 20 CC, with extended confiscation of proceeds of corruption explicitly foreseen in Article 20(3) for corruption offences. Finally, Article 356 CPC deals with non conviction-based forfeiture.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *Subparagraph 1 (c) of Art. 54*

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:*

...

*(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.*

*(a) Summary of information relevant to reviewing the implementation of the article*

If the defendant is deceased, absent or fugitive and there is no possibility to decide in criminal proceedings, the prosecutor can file an independent application for forfeiture, extended forfeiture or confiscation (non-conviction based forfeiture).

However, the defendant does not have to be dead, absent or a fugitive (these are only examples for possible non-conviction based forfeiture cases in practice). Non-conviction based forfeiture is also possible in the other cases mentioned (if they are alive, present and have unsuccessfully defended the matter but there were no criminal proceedings).

Article 356 CPC

- 1) If there are sufficient grounds for the assumption that the preconditions for forfeiture (Article 20 CC), extended forfeiture (Article 20b CC) or confiscation (Article 26 CC) are given, without the possibility of deciding thereon in criminal proceedings or in proceedings aimed at placement in one of the institutions referred to in §§ 21 to 23 CC, then the prosecutor shall file an independent application for the issue of such a financial order.
- 2) The court that had or would have jurisdiction with respect to the hearings and judgement concerning the offence giving rise to the order shall, in independent proceedings after public oral hearings, decide on an application for forfeiture or extended forfeiture by way of a judgement. If the Criminal Court rendered judgement with respect to the offence that would give rise to the order, or reserved the decision (Article 353 paragraph 2 CPC), then its chairman shall be competent sitting as a single judge.
- 3) The single judge shall, in independent proceedings after public oral hearings, decide on an application for confiscation, as a rule (Article 356a CPC) by way of a judgement. The provisions on trials concerning punishable acts not punishable by a sentence of imprisonment of more than six months and Article 354 CPC shall apply mutatis mutandis.
- 4) In application of the title on legal remedies mutatis mutandis, the judgement may be appealed to the advantage and to the disadvantage of the affected person; Article 354 paragraph 1, sentence 3 CPC shall apply mutatis mutandis.

Mutual legal assistance in non-conviction based asset forfeiture cases is possible pursuant to articles 50, 64 MLAA. Article 50(1a) MLAA provides that foreign civil proceedings for the pronouncing of a pecuniary order within the meaning of articles 20 and 20b CC shall be deemed a criminal matter for the purpose of paragraph 1.

Article 50 (1a) MLAA

- (1a) Foreign civil proceedings for the pronouncing of a pecuniary order within the meaning of Articles 20 and 20b of the Criminal Code shall be deemed a criminal matter for the purpose of paragraph 1.

Article 8a MLAA – Pecuniary order

Pecuniary order means confiscation (Art. 19a CC), forfeiture (articles 20, 20b CC), seizure (Art. 26 CC) and any other penalty, precautionary measure or legal action consisting of the removal of an asset or object which is pronounced after the execution of domestic of

foreign criminal proceedings, with the exception of monetary penalties, fines, compensation for private parties and procedural costs.

In the Abacha case a part of the funds were forfeited in a separate in-rem forfeiture proceeding.

*(b) Observations on the implementation of the article*

Non conviction-based forfeiture is available under article 356 CPC.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Subparagraph 2 (a) of Art. 54*

*2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:*

*(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;*

*(a) Summary of information relevant to reviewing the implementation of the article*

Pursuant to Article s 50 and 58 MLAA it is possible to recognize foreign freezing or seizure orders. The request for the search of persons or premises, for seizure of objects or for surveillance of telecommunications must include the original copy or a certified true copy of the order given by the competent authority (Article 56 paragraph 2 MLAA). Furthermore the provisions of UNCAC are directly applicable.

Article 50 MLAA

General Principle

1) Legal assistance may be granted at the request of a foreign authority in accordance with the provisions of this Act with regard to criminal matters including proceedings for the ordering of preventive measures and for the pronouncing of a pecuniary order as well as with regard to matters of redemption and criminal records, the proceedings for compensation of taking into custody and conviction, clemency cases and matters of sentence and measure enforcement.

1a) Foreign civil proceedings for the pronouncing of a pecuniary order within the meaning of Article s 20 and 20b of the Criminal Code shall be deemed a criminal matter for the purpose of paragraph 1.

2) An authority within the meaning of paragraph 1 is a court, the Office of the Public Prosecutor or an authority active in sentence and measure enforcement.

3) Legal assistance within the meaning of paragraph 1 is every kind of support granted for foreign proceedings in criminal matters. It also includes the approval of activities within the framework of cross-border observations based on international agreements.

#### Article 56 MLAA

##### Form and Contents of Requests for Legal Assistance

1) Legal assistance may only be granted if the facts and the legal assessment of the punishable act underlying the request may be seen from the request. In the case of a request for service it is sufficient to indicate the provisions of criminal law to be applied or applied by the State making the request.

2) The request for the search of persons or premises, for seizure of objects or for surveillance of telecommunications must include the original copy or a certified true copy of the order given by the competent authority. If this is not a court order, a declaration of the authority making the request for legal assistance must be provided which states that the requirements necessary for this measure are met under the law of the State making the request.

3) If it is not possible to order measures under the law of the State making the request in accordance with paragraph 2, a confirmation that these measures are permissible in the State making the request is sufficient.

#### Article 58 MLAA

##### Applicable Procedural Provisions

Legal assistance shall be granted in accordance with the provisions on criminal proceedings applicable in Liechtenstein. However, a request for carrying out another process shall be granted provided that this process is compatible with the principles of the Liechtenstein criminal proceedings. If legal assistance is granted in the form of an order in accordance with Article 97a of the Code of Criminal Procedure, a time period must be fixed; the foreign authority making the request shall be notified accordingly in the form provided for.

Information on ongoing investigations in relation to asset recovery:  
<http://star.worldbank.org/corruption-cases/node/20327>

#### *(b) Observations on the implementation of the article*

Pursuant to articles 50 and 58 MLAA it is possible to recognize foreign freezing or seizure orders.

In practice, there would always be a domestic parallel procedure resulting in a domestic order. Therefore, a foreign court order is not even necessary, an MLA request is sufficient. Such MLA requests do not need to go through diplomatic channels.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

#### *(c) Successes and good practices*

Liechtenstein has issued domestic freezing orders without a foreign court order, on the basis of a request for mutual legal assistance or media reports. Such requests do not need to go through diplomatic channels. Before lifting any provisional measure, consultations with the requesting State party are mandatory.

*Subparagraph 2 (b) of Art. 54*

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

*(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and*

*(a) Summary of information relevant to reviewing the implementation of the article*

Domestic orders for freezing and seizure are regulated in article 96 CPC et seq.

Evidence and instrumentalities subject to confiscation (Article s 19a and 26 CC) may be seized by judicial order (article 96 CPC). If it is feared that collection of assets subject to forfeiture under Article 20 CC or extended forfeiture under Article 20b CC would be impossible or aggravated, the court may, upon application by the Office of the Public Prosecutor, issue freezing orders pursuant to article 97a CPC. These orders may also be issued if the amount of the assets to be secured has not yet been determined precisely.

Seizure: Article 96 CPC stipulates that objects found during a search that may be of importance to the investigation or that are subject to confiscation must be included in a register and taken into judicial custody or care or seized. Every person is obliged to surrender such objects on demand, especially also documents. If the owner refuses to hand over the objects and if the objects cannot be seized in a house search, then the owner may be forced to do so by imposing a coercive penalty of CHF 1,000 and, upon continued refusal in important cases, by imposing coercive detention of up to six weeks. If they are not themselves suspected of the offence, the persons required to hand over the object shall, upon application, be reimbursed for reasonable costs necessarily incurred by separation from documents or other evidentiary objects of others or by issuing photocopies (copies, reproductions).

Freezing of assets: Assets of which it must be assumed that they will be subject to forfeiture under article 20 CC or extended forfeiture under article 20b CC may be frozen under article 97a CPC until a final judicial decision has been made on forfeiture. Under that provision, the court must issue the following orders upon application of the Office of the Public Prosecutor if it must be feared that collection of the assets would otherwise be endangered or significantly hampered:

1. the restraint, custody, and legal administration of moveable physical objects,

including the deposit of money;

2. the judicial prohibition of selling or pledging moveable physical objects;
3. the judicial prohibition of disposing of credit balances or of other assets; and
4. the judicial prohibition of selling, mortgaging, or pledging real estate or rights entered in the Land Registry.

If there is no foreign court order (article 56(2) MLAA), a declaration of the authority making the request for legal assistance must be provided which states that the requirements necessary for this measure are met under the law of the State making the request. If it is not possible to order measures under the law of the State making the request in accordance with paragraph 2, a confirmation that these measures are permissible in the State making the request is sufficient (article 56(3) MLAA). Furthermore the provisions of UNCAC are directly applicable.

## II. Seizure

### Article 96 CPC

1) If objects are found that might be of importance to the investigation or that are subject to confiscation, they shall be listed in a register and taken under judicial custody or care or shall be seized (Article 60).

1a) The seizure of objects for reasons of evidence shall not be permissible and must be lifted in any event at the request of the person concerned, to the extent that and as soon as the purpose of the evidence can be fulfilled through video, audio, or other recording or through copies of written records or automatically processed data and if it is not to be assumed that the objects themselves or the originals of the seized information will be inspected during trial. Where available, the seizure shall be limited to the recordings and copies.

2) Every person shall be obliged (Article 9 paragraph 4) to surrender objects subject to seizure on request, especially also documents, or to permit the seizure in another way. If a person refuses to surrender an object the possession of which has been admitted or has been otherwise proven, and if such surrender cannot be effected by a search of premises, the possessor may, unless he is suspected of having committed the punishable act himself or is dispensed from the duty to testify as a witness, be forced to effect such surrender by a coercive penalty of up to 10,000 francs and, if the refusal continues and in important cases, also by coercive detention for a term of up to six weeks (Article 9 paragraphs 5 and 6).

2a) Where information saved on data carriers is to be seized, every person shall grant access to that information and on request hand over an electronic data carrier in a commonly used file format or have such a data carrier produced. Moreover, the person shall permit the production of a backup copy of the information saved on the data carriers.

3) The person required to surrender the object, unless he is suspected of having committed the offense himself, shall on his application be reimbursed for reasonable costs necessarily incurred by separation from documents or other evidentiary objects by others or by issuing photocopies (copies, reproductions).

4) The seizure shall be lifted as soon as its preconditions have lapsed. The seizure shall be lifted by returning the seized objects or by destroying the recordings and copies.

#### Article 97a CPC

1) The court shall, on application of the Office of the Public Prosecutor, for purposes of securing the forfeiture (Article 20 CC) or the extended forfeiture (Article 20b CC) order the following measures in particular, if it must be feared that collection would otherwise be endangered or significantly hampered:

1. the restraint, custody, and legal administration of moveable physical objects, including the deposit of money,

2. the judicial prohibition of selling or pledging moveable physical objects,

3. the judicial prohibition of disposing of credit balances or of other assets,

4. the judicial prohibition of selling, mortgaging, or pledging real estate or rights entered in the Land Register. Through the prohibition under point 3, the State shall acquire a lien on the credit balances and other assets.

2) The order may also be issued if the amount of the sum to be secured under paragraph 1 has not yet been determined precisely.

3) The order may specify an amount of money, the deposit of which prevents execution of the order. Once the deposit has been made, the order shall be lifted in this respect on application of the affected person. The amount of money shall be determined so that it covers the expected forfeiture or the expected extended forfeiture.

4) The court shall limit the duration for which the order is issued for not more than two years. This deadline may be extended upon application for not more than one year a time.

5) The order shall be lifted as soon as the conditions for its issue have lapsed, especially also if it must be assumed that the forfeiture or extended forfeiture will not occur or if the deadline under paragraph 4 has expired.

6) A ruling on the issuing or lifting of the order may be appealed to the Court of Appeal by the Office of the Public Prosecutor, the accused, and other persons affected by the order (Article 354).

#### Article 98a CPC

1) To the extent it appears necessary for solving a case of money laundering within the meaning of the Criminal Code, a predicate offence of money laundering, or an offence in connection with organized crime, banks, investment firms, insurance companies, asset management companies, and management companies under the UCITS Act and the Investment Undertakings Act (hereinafter "institutions") shall be required by judicial ruling

1. to disclose the name, other data known to them concerning the identity of a holder of a business relationship, and the address of such person,

2. provide information on whether a suspect maintains a business relationship with this institution, is a beneficial owner or authorized person of such a business relationship, and, to the extent this is the case, provide all information necessary to precisely determine this business relationship and all documents concerning the identity of the holder of the business relationship and his powers of disposal,

3. all documents and other materials concerning the type and scope of the business relationship and associated business processes and other business transactions in a specific past or future time period.

The same shall apply if, on the basis of particular facts, it must be assumed that the business relationship has been or continues to be used for transacting a pecuniary

advantage is subject to forfeiture (Article 20 CC) or extended forfeiture (Article 20b CC).

1a) Under the conditions mentioned in paragraph 1, persons working for institutions must testify as witnesses regarding facts that have been entrusted or made available to them pursuant to the business relationship.

2) Instead of the originals of documents and other materials, photocopies may also be handed over if their correspondence with the originals is beyond doubt. If data carriers are used, the institution must surrender permanent reproductions that are readable without any additional aids or must have such reproductions produced; if automated data processing is used to administer the business relationship, then an electronic data carrier in a commonly used file format may be transmitted. Article 96 paragraph 3 shall apply *mutatis mutandis*.

3) A ruling under paragraph 1 shall in all cases be served upon the institution. Service upon other persons with powers of disposal that arise from the business relationship and have become known may be deferred if service would endanger the purpose of the investigation. The institution shall be notified of this and must maintain secrecy for the time being with respect to all facts and processes associated with the judicial order vis-à-vis clients and third parties. Under these conditions, persons working for the institution may also not inform the contracting party or third parties about ongoing investigations.

4) If the institution does not want to cede certain documents or other materials or does not want to divulge certain information, then Article s 96 et seq. shall apply *mutatis mutandis*. The prohibition against providing information under paragraph 3 shall not be affected thereby.

Information on ongoing investigations relating to asset recovery:  
<http://star.worldbank.org/corruption-cases/node/20327>

### *(b) Observations on the implementation of the article*

Domestic orders for freezing and seizure are regulated in article 96 CPC et seq. The prerequisites for granting an order are very low. For instance, a “reasonable basis” would even be an MLA request because under international comity Liechtenstein courts can trust in such requests if they are plausible and there is no contrary evidence.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### *(c) Successes and good practices*

Liechtenstein can issue domestic freezing orders proactively, without a request, even on the basis of media reports.

### *Subparagraph 2 (c) of Art. 54*

*2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:*

...

*(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Legal assistance shall be granted in accordance with the provisions on criminal proceedings applicable in Liechtenstein. However, a request for carrying out another process shall be granted provided that this process is compatible with the principles of the Liechtenstein criminal proceedings (article 58 MLAA). Furthermore the provisions of UNCAC are directly applicable.

*(b) Observations on the implementation of the article*

Liechtenstein does not require a foreign court order to grant a freezing order but can do so relying on an MLA request (see previous sub-paragraph).

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## **Article 55. International cooperation for purposes of confiscation**

*Paragraph 1 of Art. 55*

*1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:*

*(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or*

*(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Articles 64 to 67 MLAA (see above under article 54(1)) provide the basis for the enforcement of foreign court decisions. Furthermore the provisions of UNCAC are directly applicable.

For the obtaining of domestic confiscation orders, see above under article 54(1)(b). It should also be noted that Liechtenstein follows the legality principle (mandatory prosecution).

Data for such statistics (in respect of any criminal offence) is not being collected. In the Abacha case no foreign confiscation order had been received.

*(b) Observations on the implementation of the article*

For the obtaining of domestic confiscation orders, see above under article 54(1)(b). It should also be noted that Liechtenstein follows the legality principle (mandatory prosecution).

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 2 of Art. 55*

*2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.*

*(a) Summary of information relevant to reviewing the implementation of the article*

See the above explanations regarding article 54(2)(a), (b) and (c). Moreover, the provisions of UNCAC are directly applicable.

The identification of proceeds can be done under article 98a CPC, freezing under article 97a CPC and house searches under article 92 et seq. CPC.

Information on ongoing investigations relating to asset recovery:  
<http://star.worldbank.org/corruption-cases/node/20327>.

*(b) Observations on the implementation of the article*

The identification of proceeds can be done under article 98a CPC, freezing under article 97a CPC and house searches under article 92 et seq. CPC.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 3 of Art. 55*

*3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:*

*(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;*

*(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;*

*(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.*

*(a) Summary of information relevant to reviewing the implementation of the article*

See the above explanations to article 54(2(a), (b) and (c) and article 55(1). Moreover, the provisions of UNCAC are directly applicable.

Information on ongoing investigations relating to asset recovery:  
<http://star.worldbank.org/corruption-cases/node/20327>.

*(b) Observations on the implementation of the article*

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 4 of Art. 55*

*4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Legal assistance is granted in accordance with the provisions on criminal proceedings applicable in Liechtenstein. However, a request for carrying out another process is granted provided that this process is compatible with the principles of the Liechtenstein criminal proceedings (article 58 MLAA). Moreover, the provisions of UNCAC are directly applicable.

Legal assistance shall be granted in accordance with the provisions on criminal proceedings applicable in Liechtenstein. However, a request for carrying out another process shall be granted provided that this process is compatible with the principles of the Liechtenstein criminal proceedings. If legal assistance is granted in the form of an order in accordance with Article 97a of the Code of Criminal Procedure, a time period must be fixed; the foreign authority making the request shall be notified accordingly in the form provided for.

According to article 9 MLAA, the CPC is applicable in mutual assistance procedures.

See information provided under article 55(2) UNCAC

*(b) Observations on the implementation of the article*

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 5 of Art. 55*

*5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Liechtenstein has furnished the relevant laws in the course of the review process.

*(b) Observations on the implementation of the article*

Liechtenstein has furnished the relevant laws in the course of the review process.

*Paragraph 6 of Art. 55*

*6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.*

*(a) Summary of information relevant to reviewing the implementation of the article*

The provisions of the MLAA apply unless otherwise provided for in international agreements. Therefore cooperation for purposes of confiscation is not conditional on the existence of a treaty. Moreover, the provisions of UNCAC are directly applicable.

Article 1 MLAA

Priority of international Agreements

The provisions of this Act shall apply unless otherwise provided for in international agreements.

In the Abacha case UNCAC was used as the legal basis for cooperation with the requesting State.

*(b) Observations on the implementation of the article*

Liechtenstein does not require a treaty to provide cooperation for purposes of confiscation. The provisions of the MLAA apply unless otherwise provided for in international agreements. Moreover, the provisions of UNCAC are directly applicable.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*(c) Successes and good practices*

In the Abacha case, UNCAC was used as the legal basis for cooperation with the requesting State, Nigeria.

*Paragraph 7 of Art. 55*

*7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.*

*(a) Summary of information relevant to reviewing the implementation of the article*

If legal assistance is not granted in whole or in part, the foreign authority making the request will be informed by being given the reasons in the form provided for. If there are any circumstances opposed to the assumption of enforcement or if the request is not suitable for legal treatment, the Office of Justice must immediately refuse the request. This decision is not reviewable but the requesting State can make a new request which is enforceable and suitable for legal treatment.

The Office of Justice may demand at any one time of the proceedings, on its own account or at the request of the Court of Justice, supplementary documents from the State making the request for assumption of enforcement. Because of the fact that the provisions of UNCAC are directly applicable, consultation with the requesting State Party before refusing the request is mandatory.

Confiscation and forfeiture shall be refrained from if it would be disproportionate to the importance of the matter or the procedural efforts.

Article 57 MLAA

Refusal of Legal Assistance; Lack of Competence

1) If legal assistance is not granted in whole or in part, the foreign authority making the

request shall be informed by indicating the reasons in the form provided for.

#### Article 66 MLAA Handling of Requests Received

Requests for the enforcement of decisions taken by foreign criminal courts received by the Ministry of Justice shall be transmitted to the Court of Justice (Art. 67, paragraph 1). If, on receipt of the request, there are any circumstances opposed to the assumption of enforcement for one of the grounds set out in articles 2 and 3, paragraph 1, or if the request is not suitable for legal treatment, the Ministry of Justice must immediately refuse the request. The Ministry of Justice may demand at any one time of the proceedings, on its own account or at the request of the Court of Justice, supplementary documents from the State making the request for assumption of enforcement.

#### Article 19a CC Confiscation

2) Confiscation shall be refrained from to the extent that it is disproportionate to the seriousness of the offence or of the incriminating act of the offender.

#### Article 20a CC Exclusion of forfeiture

2) Forfeiture shall be excluded furthermore:

...

2. to the extent that the party concerned has satisfied civil claims arising from the act or has undertaken to do so in enforceable form;

In practice, Liechtenstein applies a de minimis threshold of about CHF 10,000 as far as assets of entities are concerned.

#### *(b) Observations on the implementation of the article*

During the country visit, it was added that according to article 2 MLAA, the Office of Justice decides whether the request violates public order or other essential interests of the Principality of Liechtenstein. A reason to refuse a request under this provision would be the fact that the data on which the request is based had been acquired through a criminal offence (e.g. stolen tax information). Moreover, under article 66 MLAA, a request based on proceedings which flagrantly violated basic human rights or the rule of law would, for instance, fall under this category.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

#### *Paragraph 8 of Art. 55*

*8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.*

*(a) Summary of information relevant to reviewing the implementation of the article*

The Office of Justice may demand at any one time of the proceedings, on its own account or at the request of the Court of Justice, supplementary documents from the State making the request for assumption of enforcement. Because of the fact that the provisions of UNCAC are directly applicable, consultation with the requesting State Party before lifting any provisional measure are mandatory.

It should be added that there is always the possibility to appeal any order to lift the measure.

*(b) Observations on the implementation of the article*

Because of the fact that the provisions of UNCAC are directly applicable, consultations with the requesting State Party before lifting any provisional measures are mandatory.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*(c) Successes and good practices*

Liechtenstein has issued domestic freezing orders without a foreign court order, on the basis of a request for mutual legal assistance or media reports. Such requests do not need to go through diplomatic channels. Before lifting any provisional measure, consultations with the requesting State party are mandatory.

*Paragraph 9 of Art. 55*

*9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Forfeiture is excluded pursuant to article 20a CC to the extent that the party concerned has satisfied civil claims arising from the act or has undertaken to do so in enforceable form.

Article 354 CPC contains provisions on the rights of uninvolved third parties in criminal proceedings to the extent they are affected by forfeiture or confiscation; if parties concerned assert their right only after entry into effect of the decision on forfeiture or confiscation, they shall be at liberty to assert their claims to the object or its purchase price (article 253 CPC) within thirty years after the decision vis-à-vis Liechtenstein by way of civil proceedings.

Article 20a CC Exclusion of forfeiture

2) Forfeiture shall be excluded furthermore:

...

2. to the extent that the party concerned has satisfied civil claims arising from the act or has undertaken to do so in enforceable form;

#### § 20c

##### Exclusion of the extended forfeiture

- 1) The extended forfeiture according to Art. 20b para. 1 is excluded insofar as there are legal claims on the assets concerned by persons who are not involved in the criminal organization or terrorist organization or terrorist financing.
- 2) Article 20a shall apply mutatis mutandis.

#### Article 354 CPC

- 1) Persons who have a right to the assets or objects threatened by forfeiture or confiscation or assert such a right, who are liable for monetary penalties or the costs of the criminal proceedings, or who, without being accused or indicted themselves, are threatened with forfeiture, or confiscation, shall be summoned to the trial. In the trial and in the subsequent proceedings, they shall have the rights of the accused, to the extent that the proceedings concern the decision on these financial orders. If a summons has been served upon the affected persons, the proceedings may be conducted and decided even in their absence.
- 2) If the persons referred to in paragraph 1 assert their right only after entry into effect of the decision on forfeiture or confiscation, they shall be at liberty to assert their claims to the object or its purchase price (Article 253 CPC) within thirty years after the decision vis-à-vis the State by way of civil proceedings.

#### *(b) Observations on the implementation of the article*

Forfeiture shall be excluded pursuant to article 20a CC to the extent that the party concerned has satisfied civil claims arising from the act or has undertaken to do so.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### Article 56. Special cooperation

*Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

It is possible to transmit information as described. The main provisions are article 54a MLAA and article 10 of the Council of Europe Convention on Laundering, Search,

## Seizure and Confiscation of the Proceeds from Crime.

### Art. 54a MLAA

#### Spontaneous Transmission of Information

- 1) The court may spontaneously transmit to a foreign authority information that it has obtained for its own criminal proceedings if
  1. an international agreement provides a basis for such transmission,
  2. this information might be helpful for the opening or
  3. the transmission of the information would also be permissible within the framework of a request for legal assistance by the foreign authority.
- 2) The transmission of information is also permissible without an international agreement if
  1. on the basis of specific facts, it must be assumed that the content of the information may help prevent a punishable act subject to extradition (Art. 11) or defend against an immediate and serious threat to public security, and
  2. the precondition set out in paragraph 1(3) is met.
- 3) The transmission of information in accordance with paragraphs 1 and 2 must take place under the condition that
  1. the transmitted information may not be used without prior consent of the transmitting authority for any purpose other than the purpose giving rise to the transmission,
  2. the transmitted data must immediately be deleted or corrected by the receiving authority as soon as
    - a) it turns out that the data is incorrect,
    - b) the transmitting authority communicates that the data has been gathered or transmitted unlawfully, or
    - c) it turns out that the data is not or no longer needed for the purpose giving rise to the transmission.
- 4) Art. 77, paragraph 3 shall be applied mutatis mutandis.

#### Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

##### Article 10 - Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

In practice, information on proceeds from Convention offences has been forwarded. There have been several preliminary contacts and physical meetings with authorities of other States parties with a view to clarifying the formal and substantial requirements in advance of the transmission of the formal requests, e.g. with authorities in Egypt and Ukraine. Unfortunately, the necessary information was thereafter not always provided.

*(b) Observations on the implementation of the article*

Liechtenstein's framework allows for spontaneous transmission of information prior to criminal proceedings, or where proceedings may not be brought under Liechtenstein's laws. The law also allows for spontaneous transmission of information such as suspicious transactions or unusual payments by legal entities.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

**Article 57. Return and disposal of assets**

*Paragraph 1 of Art. 57*

*1. Property confiscated by a State Party pursuant to articles 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Assets and objects confiscated pursuant to article 64 MLAA devolve upon the State of Liechtenstein. But the Government, pursuant to article 253a CPC, may conclude an agreement on the sharing of such assets and objects with the State where the offence was committed.

Article 64 MLAA

...

7) Fines, forfeited assets and confiscated objects devolve upon the State.

Article 253a CPC

1) In the case of offenses committed abroad, the Government may conclude an agreement with the State where the offense was committed with respect to the sharing of deprived, forfeited, or confiscated assets and may in particular include conditions in this agreement concerning the use of assets.

2) The Government shall be responsible for execution.

In addition, if the account holder agrees, money does not need to be confiscated but can be given back directly. Once assets are frozen, this simple procedure is often possible and used in practice.

The Abacha case

On the basis of suspicious activity reports submitted to the FIU, the Office of the Public

Prosecutor launched corruption investigations in 2000. In 2008, the Criminal Court sentenced several companies attributable to the Abacha family to the payment of a sum of money proven to have been taken from the national budget of Nigeria. With the judgment of the Constitutional Court in 2012, this judgment for the recovery of the assets became final. Since several companies did not surrender the assets subject to the recovery order, enforcement proceedings had to be carried out.

Upon conclusion of these proceedings, the assets held by one of the companies in the amount of EUR 7.5 million were returned to Nigeria at the end of 2013.

However, four of the companies involved in the Abacha case filed a complaint against Liechtenstein at the European Court of Human Rights (ECtHR) in Strasbourg in August 2012, leading to a further delay in the return of the remaining assets. Liechtenstein needed to obtain guarantees from Nigeria that in the event the ECtHR decided against Liechtenstein after a return of the assets, the liability would be covered by Nigeria. In January 2014, talks were held at the governmental level in this regard between Nigeria and Liechtenstein. At the same time, at the request of Nigeria and in accordance with Liechtenstein the World Bank declared its willingness to monitor the use of the returned assets. However, in May 2014, the complaint pending in Strasbourg was suddenly withdrawn by the four Abacha companies, clearing the path for the immediate return of the assets in accordance with article 57 subparagraph 3 (a) of UNCAC. This surprise move by the applicants left Liechtenstein no time to finalize an agreement on the monitoring and use of the assets.

At its meeting of 17 June 2014, the Liechtenstein Government approved the return to the Federal Republic of Nigeria of the last tranche of the assets in the amount of EUR 167 million.

#### *(b) Observations on the implementation of the article*

Assets and objects confiscated pursuant to article 64 MLAA devolve upon the State of Liechtenstein. But the Government, pursuant to Article 253a CPC, may conclude an agreement on the transfer of such assets and objects to the State where the offence was committed.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

#### *Paragraph 2 of Art. 57*

*2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

Because of the fact that the provisions of UNCAC are directly applicable, there is a legal basis enabling the Government to return confiscated property, when acting on the

request made by another State Party, in accordance with UNCAC, taking into account the rights of bona fide third parties.

*(b) Observations on the implementation of the article*

The provisions of UNCAC are directly applicable. Therefore, there is a legal basis enabling Liechtenstein to return confiscated property, taking into account the rights of bona fide third parties. Moreover, article 253a CPC applies.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Subparagraph 3 (a) of Art. 57*

*3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:*

*(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;*

*(a) Summary of information relevant to reviewing the implementation of the article*

Pursuant to article 253a CPC, the Government may conclude an agreement on the transfer of assets and objects to the State where the offence was committed. The Government in principle has a wide discretion regarding the conclusion of sharing-agreements. But because of the fact that the provisions of UNCAC are directly applicable, there is a legal basis enabling the Government to return confiscated proceeds of embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity to the requesting State. In this case it is mandatory to return the forfeited assets.

Although there is no legislative basis enabling the waiving of the requirement of a final judgement in the requesting State assets can still be returned on a different basis.

*(b) Observations on the implementation of the article*

During the country visit it was clarified that although there is no legislative basis enabling the waiving of the requirement of a final judgement in the requesting State, assets can still be returned on a different basis (e.g. in the Abacha case, the funds were forfeited in separate in-rem forfeiture proceedings). Moreover, if there is a domestic confiscation order, then the money can be returned also in the absence of a foreign final judgment.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Subparagraph 3 (b) of Art. 57*

*3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:*

...

*(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;*

*(a) Summary of information relevant to reviewing the implementation of the article*

Pursuant to article 253a CPC, the Government may conclude an agreement to the sharing of assets and objects with the State where the offence was committed. The Government in principle has a wide discretion regarding the conclusion of sharing-agreements. But because of the fact that the provisions of UNCAC are directly applicable, there is a legal basis enabling the Government to return confiscated proceeds of any other offences under the Convention (besides embezzlement) to a requesting State.

Liechtenstein has not received any such request so far.

*(b) Observations on the implementation of the article*

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Subparagraph 3 (c) of Art. 57*

*3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:*

...

*(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.*

*(a) Summary of information relevant to reviewing the implementation of the article*

On the basis of this provision of UNCAC, which is directly applicable, the Government may return confiscated proceeds of any other offences under the Convention, including

in cases where the requesting party cannot establish prior ownership or damages, to return such confiscated proceeds to its prior legitimate owners and enabling compensation for the victims of the crime.

Any injured party may join the criminal proceedings as a private party and may claim damages. The court may award damages in the judgment to the private party (articles 32 to 34 CPC, articles 257 to 270 CPC).

Liechtenstein has not received any such request so far.

*(b) Observations on the implementation of the article*

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 4 of Art. 57*

*4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.*

*(a) Summary of information relevant to reviewing the implementation of the article*

This provision of UNCAC is also directly applicable, providing the legal basis for the Government to deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings prior to return or disposition of confiscated property.

In the Abacha case, funds were retained by Liechtenstein for ‘reasonable expenses’. The costs of proceedings were estimated.

*(b) Observations on the implementation of the article*

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

*Paragraph 5 of Art. 57*

*5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.*

*(a) Summary of information relevant to reviewing the implementation of the article*

This provision of UNCAC is also directly applicable, providing the legal basis for the Government to conclude agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

This UNCAC provision deals with voluntary arrangements defining the modalities of the return and the eventual disposal of confiscated assets. In the Abacha case, Nigeria was not interested in concluding such an arrangement.

Ensuring transparency and accountability in the return of assets has been the focus of an international seminar organised by the International Centre for Asset Recovery (ICAR) in Küsnacht, Switzerland, on 24/25 October 2013:

<https://www.baselgovernance.org/news/icar/icar-hosts-international-experts-workshop-%E2%80%9Creturning-stolen-assets%E2%80%9D>

The results of that seminar have been fed into similar activities undertaken by UNODC on the basis of paragraph 16 of UNCAC COSP Resolution 6/3:

*Encourages* States parties and the United Nations Office on Drugs and Crime to continue sharing experiences and building knowledge on the management, use and disposal of frozen, seized, confiscated and recovered assets, and to identify good practices as necessary, building upon existing resources that address the administration of seized and confiscated assets, including with a view to contributing to sustainable development;

Liechtenstein is one of the three core donors of ICAR (besides Switzerland and the UK). The total of contributions Liechtenstein has made to ICAR since its inception in 2006 amounts to CHF 3 Million. ICAR's activities aim at strengthening the legal, technical and practical capacities of developing countries to recover stolen assets through training, case work as well as legal and policy analysis:

<https://www.baselgovernance.org/theme/icar>

#### *(b) Observations on the implementation of the article*

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

### Article 58. Financial intelligence unit

*States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

The FIU is headed by the Director with the assistance of the Deputy Director. The main units of the FIU are the Strategic Analysis Unit and the Operational Analysis Unit. The Operational Analysis Unit is headed by the deputy director and is composed of four analysts. The Strategic Analysis Unit is composed of two analysts. An analyst from each unit is also assigned responsibilities within the other analysis unit. The

International Affairs Unit is composed of one person. The FIU also includes a secretariat with one administrative officer. The total number of persons employed by the FIU is 10. The current staff constitutes a forty percent increase since 2008.

All FIU employees are public officials employed on an indefinite basis. All staff have access to the necessary IT infrastructure, the FIU has access to commercial databases (LexisNexis, World-Check) and has developed, jointly with the Basel Institute on Governance, the Asset Recovery Intelligence System (ARIS) which allows for additional use of open-source information and the detection of relevant networks.

The FIU conducts a pre-selection procedure with potential candidates with the aim to select competent and loyal staff members. It can conduct background checks with the police. The formal hiring procedure is conducted via the Office of Human and Administrative Resources in accordance with the rules for hiring public servants in the principality. The recruitment procedure is merit-based and open also to foreign citizens. In fact, the current and all previous FIU directors and deputy directors were Swiss nationals which guarantees their independence. The background of the staff members reflects the operational needs of the FIU: lawyers and economists, police officers and experts with a university degree in international affairs, and staff with experience in compliance in the private sector. The staff fluctuation in the FIU is low; some current staff members had already joined the FIU at the date of its establishment. Foreign languages spoken by staff members include: English, French, Spanish, and Bosnian. The compensation of Liechtenstein public officials is adequate and there is no competition with salaries in the private sector in this regard.

The FIU regularly conducts internal training courses for its staff members. The operational analysts have also attended the Swiss Criminal Analysis Course and the Swiss Police Institute in Neuchâtel (Switzerland).

The FIU was established in 2001 and joined the Egmont Group of Financial Intelligence Units one year later. Since then, it has established itself as a well-respected and very engaged Egmont member leading various projects over the last ten years and providing for chairmanship of important working groups (Chair of Operational Working Group, Chair of Training Working Group, Vice-Chair of newly formed Technical Assistance and Training Working Group). The current Director of the FIU also acts as a Chair of MONEYVAL (Council of Europe), Europe's main FSRB of which Liechtenstein is also a well-respected and long-standing member.

In addition to that, the FIU has regularly participated in meetings held under the auspices of the Arab Forum on Asset Recovery as well as the Ukrainian Forum on Asset Recovery. The FIU's Director has chaired the Istanbul Action Plan Meetings (OECD Anti-Corruption Network) for a number of years and acted as an anti-corruption expert for the IMF, the OSCE, the World Bank and other international organizations in his previous career. Other members of the FIU are trained evaluators under the FATF standard (both 2003 and 2012) and have participated as law enforcement experts in a number of MONEYVAL evaluations of other countries.

Under the revised FIU Act of 2016 the FIU has a broadened ability to request additional information from reporting entities. It can exchange such information freely with Egmont member FIUs and having a MoU in place is no prerequisite for the exchange of financial intelligence. So far, the FIU has signed MoUs with 23 partner FIUs, given that those FIUs were legally required to have an MoU in place in order to be able to exchange information with the FIU of Liechtenstein.

Liechtenstein has implemented a SAR (Suspicious Activity Report) regime. One SAR can therefore entail a large number of individual transactions. A suspicious activity is connected to any suspicious behaviour observed in connection to a client's account, i.e. instances that do not permit the reporting entity to fully conclude that the proceeds and operations in question are somehow connected to (potential) crime.

Most SARs deal with instances of potential fraud/embezzlement/misappropriation. To a lesser degree also with corruption and fiscal offences.

	FIU Cases in the reference year			Related judicial proceedings in reference year – Number of cases						Related judicial proceedings in reference year – number of persons					
				Prosecution (based on FIU disseminated cases)			Convictions (final)			Prosecution (based on FIU disseminated cases)			Convictions (final)		
	Under analysis at year end	Archived in reference year	Reports disseminated for investigation	M	F	Other criminal offences	M	F	Other criminal offences	M	F	Other criminal offences	M	F	Other criminal offences
				L	T		L	T		L	T		L	T	
2013	8	315	194	3	0	5	0	0	2	3	0	6	0	0	2
2014	20	279	172	7	0	4	2	0	2	9	0	4	2	0	2
2015	9	368	251	1	0	4	0	0	3	1	0	5	0	0	3

International co-operation	2013	2014	2015
Foreign requests received by the FIU	347	304	280
Foreign requests executed by the FIU	343	304	280
Foreign requests refused by the FIU	4	0	0
Spontaneous sharing of information received	3	5	

by the FIU			
<b>TOTAL (incoming requests and information)</b>	<b>347</b>	<b>304</b>	<b>280</b>
<b>Average number of days to respond to requests from foreign FIUs</b>	<b>&lt;5</b>	<b>&lt;5</b>	<b>&lt;5</b>
<b>Refusal grounds applied</b>	<b>Fishing Exercise</b>		
<b>OUTGOING REQUESTS</b>	<b>374</b>	<b>315</b>	<b>313</b>
<b>Requests sent by the FIU</b>	<b>374</b>	<b>315</b>	<b>313</b>
<b>Spontaneous sharing of information sent by the FIU</b>	<b>4</b>	<b>6</b>	<b>6</b>
<b>TOTAL(outgoing requests and information)</b>	<b>374</b>	<b>315</b>	<b>313</b>

For further information on the Liechtenstein FIU and the FIU Act please also refer to the information provided under article 14(1)(b) and: <http://www.fiu.li/index.php/en/>

*(b) Observations on the implementation of the article*

During the country visit, it was added that, at the moment, the FIU has no powers to temporarily block the transfer of suspicious funds. However, this power will come with the transposition of the 4<sup>th</sup> EU AML Directive.

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

**Article 59. Bilateral and multilateral agreements and arrangements**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

Liechtenstein uses the incorporation system or monist system. A ratified agreement becomes part of domestic law at the date of entry into force of the agreement, without the need for separate legislation to be created. The Liechtenstein legal order has no explicit rule specifying the rank of international treaties. Accordingly, international

agreements may have the rank of the Constitution, legislation, or ordinances. The rank is in principle determined by the content of the provision in question.

The Constitutional Court has often ruled on the rank of constitutional treaties and has repeatedly found that international treaties approved by Parliament enjoy at least the rank of legislation. According to the Constitutional Court's case law, international treaties concerning substantive constitutional law may be ranked lower than the Constitution in formal terms, but rank above legislation in substantive terms.

Liechtenstein has ratified the Council of Europe Criminal Law Convention on Corruption and the Additional Protocol. The instrument of ratification for these two instruments was deposited with the Secretary General of the Council of Europe on 9 December 2016. They will enter into force for Liechtenstein on 1 April 2017.

Liechtenstein has also been a supporter of the initiative on a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes, most recently discussed at the annual conference of the International Association of Prosecutors in Dublin.

Please find here the links to the Council of Europe Criminal Law Convention on Corruption and its Additional Protocol:  
[http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/default_en.asp)

#### *(b) Observations on the implementation of the article*

It was concluded that Liechtenstein is in compliance with its obligations under this provision of the Convention.

## V. Glossary of terms and acronyms

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ACU	Anti-Corruption Unit
AML/CFT	Anti-Money Laundering/Counter-Terrorism Financing
BO	Beneficial Owner
Code of Conduct	Code of Conduct on Corruption Prevention for public officials
CC	Criminal Code
DDA	Due Diligence Act
DNFBP	Designated Nonfinancial Businesses and Professions
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FIUA	Financial Intelligence Unit Act
FMA	Financial Management Authority

GRECO	Group of States against Corruption
KYC	Know Your Customer
LC	Liechtenstein Constitution, LGBl. 1921 no. 15
NAO	National Audit Office
NPAA	National Public Administration Act, LGBl. 1922 No. 24
OHAR	Office of Human and Administrative Resources
PCA	Persons and Companies Act
PEP	Politically Exposed Person
PIA	Public Information Act, LGBl. 1999 no. 159
PRA	People's Rights Act
SPA	State Personnel Act
SPO	State Personnel Ordinance
UNCAC	United Nations Convention against Corruption
Working Group	Working Group for the Prevention of Corruption