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Law
of 25 November 2005
on Asset Management
(Asset Management Act; AMA)

I hereby grant my consent to the following Resolution adopted by Parliament:

I. General provisions

Article 1

Object and purpose

1) This Act governs the preconditions for providing or arranging to provide asset management on a professional basis and serves to protect clients and to secure confidence in the Liechtenstein financial center.

2) This Act serves to implement Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (EEA Compendium of Laws: Annex IX – 30ca.01).

Article 2

Scope

1) Undertakings that provide or arrange to provide asset management on a professional basis (asset management companies) shall be subject to this Act.

Such companies shall also constitute investment firms within the meaning of Directive 2004/39/EC.

2) This Act shall not apply to:

- a) banks and finance companies within the meaning of the Banking Act;
- b) insurance undertakings within the meaning of the Insurance Supervision Act;
- c) pension schemes within the meaning of the Occupational Pensions Act;
- d) persons which provide services under article 3, paragraph 1 exclusively in the framework of a mandate as an organ of a legal person, trust, other collective or asset entity;
- e) persons which exclusively have holdings in undertakings that do not constitute financial instruments pursuant to article 4, paragraph 1(g);
- f) persons which provide services pursuant to article 3, paragraph 1 exclusively for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings;
- g) persons which do not provide any investment services or activities other than dealing on own account, unless they are market makers or deal on own account outside a regulated market or market trading facility (MTF) on an organized, frequent, and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;
- h) persons which provide services consisting exclusively in the administration of employee-participation schemes;
- i) persons which provide services that only involve both the administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings;
- k) the members of the European System of Central Banks and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;
- l) investment undertakings within the meaning of the Investment Undertakings Act and pension funds, whether coordinated at the EEA level or not, and the depositaries and managers of such undertakings;
- m) persons providing investment advice in the course of providing another professional activity not covered by this Act, provided that the provision of such advice is not specifically remunerated; and
- n) the Liechtenstein Postal Service (Liechtensteinische Post Aktiengesellschaft) within the meaning of the Postal Act.

3) The rights conferred by this Act shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the European System of Central Banks performing their tasks as provided for by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank.

Article 3

Business areas

1) Asset management according to article 2, paragraph 1 encompasses the following services:

- a) portfolio management;
- b) investment advice;
- c) reception and transmission of orders concerning one or more financial instruments; and
- d) investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments that directly serve the purpose of customer care.

2) Providing and arranging to provide services for third parties enumerated in paragraph 1 may only be undertaken by asset management companies. This provision is without prejudice to article 2, paragraph 2.

3) At no time may asset management companies accept or hold assets of third parties.

Article 4

Definitions

1) For the purposes of this Act, the following definitions shall apply:

- a) tied agent: a natural or legal person who, under the full and unconditional responsibility of only one asset management company on whose behalf it acts, provides services under article 3, paragraph 1 for clients or prospective clients and/or provides advice to clients or prospective clients in respect of those services or financial instruments;
- b) client: any natural or legal person to whom an asset management company provides services under article 3, paragraph 1;
- c) professional client: a client who possesses the experience, knowledge, and expertise to make its own investment decisions and properly assess the risks

that it incurs. In order to be considered a professional client, the client must comply with the criteria set out in the Annex;

- d) retail client: any client who is not a professional client;
- e) investment advice: the provision of personal recommendations to a client, either upon its request or at the initiative of the asset management company, in respect of one or more transactions relating to financial instruments;
- f) portfolio management: managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;
- g) financial instruments: the following instruments:
 1. transferable securities;
 2. money-market instruments;
 3. units in collective investment undertakings (UCITS);
 4. options, futures, swaps, off-market forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices, or financial measures which may be settled physically or in cash;
 5. options, futures, swaps, off-market forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
 6. options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled, provided that they are traded on a regulated market and/or a multilateral trading facility (MTF);
 7. options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled not otherwise mentioned in point 6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are cleared and settled through recognized clearing houses or are subject to regular margin calls;
 8. derivative instruments for the transfer of credit risk;
 9. financial contracts for differences; or
 10. options, futures, swaps, off-market forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances, or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or

- other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices, and measures not otherwise mentioned in this subparagraph (g), which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market or an MTF, are cleared and settled through recognized clearing houses, or are subject to regular margin calls;
- h) transferable securities: those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:
 - 1. shares in companies and other securities equivalent to shares in companies, partnerships, or other entities, and depositary receipts in respect of shares;
 - 2. bonds or other forms of securitized debt, including depositary receipts in respect of such securities; or
 - 3. any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities, or other indices or measures;
 - i) money-market instruments: those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit, commercial papers, and money-market book claims of the Swiss Confederation, excluding instruments of payment;
 - k) Member State: a State that is a member of the European Economic Area;
 - l) home Member State:
 - 1. if the asset management company is a foreign natural person, the Member State in which its head office is situated;
 - 2. if the asset management company is a legal person, the Member State in which its registered office is situated; or
 - 3. if the asset management company has, under its national law, no registered office, the Member State in which its head office is located;
 - m) host Member State: a Member State
 - 1. other than the home Member State, in which an asset management company has a branch or performs services and/or activities; or
 - 2. in which a regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same Member State;
 - n) competent authority: the authority of an individual State that exercises supervision over asset management companies on the basis of legal and administrative provisions;

- o) branch: a place of business other than the head office which is part of an asset management company, which has no legal personality, and which provides services under article 3, paragraph 1 for which the asset management company has been authorized; all the places of business set up in the same Member State by an asset management company with head offices in another Member State shall be regarded as a single branch;
- p) qualifying holding: the direct or indirect holding in an asset management company which represents 10% or more of the capital or of the voting rights, or which makes it possible to exercise a significant influence over the management of the asset management company in which that holding subsists. Article 4 of the Disclosure Act shall be applied to determine the voting rights;
- q) parent undertaking: a parent undertaking within the meaning of the accounting rules of the Law on Persons and Companies (Personen- und Gesellschaftsrecht, PGR) and any undertaking that exercises a dominant influence on another undertaking;
- r) subsidiary: a subsidiary undertaking within the meaning of the accounting rules of the Law on Persons and Companies and any undertaking on which a parent undertaking exercises a dominant influence. Every subsidiary of a subsidiary shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings;
- s) close link: a link in which two or more natural or legal persons are linked by:
 - 1. participation, which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking; or
 - 2. control, which means the link between a parent undertaking and a subsidiary, or an equivalent relationship between a natural or legal person or an undertaking; any subsidiary of a subsidiary shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons;

- t) regulated market: a multilateral system operated and/or managed by a market operator, which:
1. brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and
 2. is authorized and functions regularly and in accordance with the provisions of Title III of Directive 2004/39/EC;
- u) multilateral trading facility (MTF): a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the provisions of Title II of Directive 2004/39/EC;
- v) on a professional basis: independently and regularly engaging in an activity with the intention to achieve a return or other economic advantage, regardless of the purposes for which this economic advantage is intended.
- 2) The definitions set out in Directive 2004/39/EC shall apply *mutatis mutandis* on a supplemental basis.
 - 3) The terms designating persons and functions in this Act shall apply to both female and male genders.

II. Licenses

Article 5

Licensing requirement

Subject to article 23 and article 34, asset management companies shall be required to hold a license issued by the FMA prior to taking up business activities.

Article 6

Licensing conditions and procedures

1) Upon application, the license for an asset management company shall be granted if:

- a) the company is established in the legal form of a juridical person or a general or limited partnership;
- b) the registered office and the head office of the company are situated in Liechtenstein;
- c) in terms of staffing and premises, the company has a suitable place of business in Liechtenstein and an organization appropriate for fulfilling its responsibilities;
- d) the general management consists of at least two persons who are trustworthy and capable of acting. At least one general manager must actually work in the company in a leading position and fulfill the prerequisites set out in article 7. The general management may consist of only one general manager if it is shown that solid and prudent leadership of the asset management company and its continuation upon loss of the general manager's capacity to act is ensured without interruption through appropriate rules governing substitution and succession;
- e) a workable business plan including the organizational structure of the asset management company is presented. In particular, this business plan must include information concerning the organization, marketing, and the implementation in the market as well as the financial planning and the financing for the first three business years;
- f) an external audit office according to article 43 has been appointed;
- g) the ownership situation of the company is explained. The shareholders with a qualifying holding must meet the requirements necessary to fulfill the interest of ensuring solid and prudent management of the asset management company. If close links exist between the asset management company and other natural or legal persons, then the close links shall not adversely affect the proper exercise of the FMA's supervisory functions;
- h) the professional and personal qualities of the persons entrusted with the administration and management always guarantee sound and proper business operation;
- i) evidence that the capitalization required by article 8 is sufficient;
- k) equity capital of at least 100,000 Swiss francs or the equivalent in euros or US dollars has been paid up in full and in cash; and

- 1) the company does not hold any additional licenses under the Professional Trustees Act, the Lawyers Act, the Patent Attorneys Act, or the Auditors and Auditing Companies Act.
- 2) Originals of the application and the supporting materials shall be submitted. The materials may not be older than three months. In the case of foreign-language applications, the FMA may require a certified translation.
- 3) The application for the grant of a license shall be decided on at most six months after receipt of the complete application materials.
- 4) The FMA shall include the licensed asset management companies in a directory. The directory shall be open to the public and shall be updated monthly. It may be viewed by means of a retrieval procedure.
- 5) The Government shall provide further details by ordinance.

Article 7

General management

- 1) General management within the meaning of this Act is the actual act of managing by a natural person (general manager). A general manager within the meaning of article 6, paragraph 1(d) must:
 - a) have Liechtenstein citizenship, the citizenship of a Member State or of Switzerland, or enjoy equivalent status on the basis of international treaties. The FMA may give special consideration to justified cases if there are no opposing public interests;
 - b) taking into account his other obligations, the organization of the asset management company, and his place of residence, be able to fulfill his responsibilities in the asset management company without reproach;
 - c) be sufficiently qualified for the intended position, on the basis of his education and professional experience; he must have a minimum of three years of relevant full-time experience;
 - d) actually be working for the company in a managing capacity;
 - e) be given the necessary authority for purposes of general management. In particular, this authority includes signatory rights entered into the Public Registry and extensive internal managerial authority;
 - f) either be a shareholder or an employee in a long-term employment relationship; and
 - g) actually work at the Liechtenstein registered office with a workload appropriate to the demands of the company.

- 2) One and the same person may only be general manager of at most two asset management companies.
- 3) Evidence of actual management activities must be presented by appropriate means.
- 4) The general management shall be responsible for the professionally sound and proper provision of services and for compliance with the legal requirements, including notification requirements.
- 5) The Government shall provide further details by ordinance.

Article 8

Own funds

- 1) An asset management company must continuously hold own funds that are equivalent to at least one quarter of its fixed operating costs according to the last annual statement of accounts. For asset management companies that do not yet have an annual statement of accounts, the fixed operating costs budgeted in the business plan shall be used. Irrespective of this own funds requirement, the asset management company must continuously maintain the equity capital required upon grant of the license as its minimum capital.
- 2) The own funds provisions must be fulfilled by each asset management company subject to this Act as well as on a consolidated basis.
- 3) The auditing office must annually review the continuous availability of the minimum capital and the required capitalization.
- 4) The Government shall provide further details, in particular the calculation of own funds and fixed operating costs, by ordinance.

Article 9

Content and scope of the license

- 1) The license authorizes the asset management company to provide and arrange to provide the services under article 3, paragraph 1 on a professional basis.
- 2) The license may be granted with conditions.

Article 10

Changes subject to approval and notification

- 1) The following changes require approval in advance by the FMA:
 - a) any intended personnel changes to the general management and an intended change of the auditing office; and
 - b) any intended amendment to the articles of association and the rules of business that concern the clientele, the equity capital, or the organization, as well as any intended acquisition and any intended sale of a qualifying holding.
- 2) Any intended personnel changes to the board of directors shall require notification to the FMA in advance.
- 3) All information shall be made available to the FMA that it needs to comprehensively assess the changes under paragraphs 1 and 2 and to satisfy itself that all licensing conditions continue to hold. In cases under paragraph 1, entries in the Public Registry shall only be allowed after approval by the FMA; in cases under paragraph 2, only after notification to the FMA.
- 4) The Government may provide further details by ordinance.

III. Rights and duties**A. General rights and duties**

Article 11

Protection of nomenclature, business name

- 1) Nomenclature indicating activities as an asset management company may only be used in the business name, the designation of the purpose of the business, and business advertising of companies that have received a license as an asset management company.
- 2) The business name is subject to approval by the FMA from a supervisory perspective.

Article 12

Delegation of activities

- 1) The asset management company may delegate one or more of its activities to third parties for purposes of efficient general management or for providing its services.
- 2) Delegation of main activities requires approval by the FMA. Approval shall only be granted if the delegatee meets the necessary conditions.
- 3) Delegation to third parties shall not relieve the asset management company of liability. The asset management company shall ensure the necessary instructions and the suitable monitoring and control of the delegatee. In particular, personal data and other materials necessary for supervision shall be kept in Liechtenstein. Delegation shall not lead to a violation of the obligation of secrecy.
- 4) Approval for delegation may be withdrawn if the conditions for delegation are no longer met.
- 5) The Government shall, in particular, regulate the scope and conditions of delegation by ordinance.

Article 13

Conversion

An asset management company may be converted into a fund management within the meaning of the Investment Undertakings Act if it fulfills the requirements of the Investment Undertakings Act. The license as an asset management company shall expire upon conversion.

B. Investor protection

Article 14

Code of Conduct and ethical rules

- 1) Asset management companies and their employees must provide their services conscientiously, fairly, honestly, and professionally in accordance with the best interests of their clients, especially in accordance with articles 15 to 19, and their conduct must uphold the honor and respect of their profession.

2) The FMA shall issue a guideline providing more details on the Code of Conduct. This guideline shall serve as an interpretation aid and may be used to interpret rights and duties.

3) The FMA may declare ethical rules governing the profession to be binding.

4) The Government shall provide further details by ordinance.

Article 15

Client profile

1) The asset management company shall compile a client profile so that it can provide or recommend services and financial instruments deemed appropriate for the client or the prospective client.

2) For purposes of compiling the profile, the asset management company shall obtain from the client the requisite information concerning the client's financial situation, investment goals, and knowledge and experience in investing.

3) If the client or prospective client refuses to provide the information enumerated in paragraph 2 or if the information provided is insufficient, then the asset management company shall indicate to the client that such a decision will not allow the company to determine whether the service or product envisaged is appropriate for the client.

4) A refusal or insufficient information under paragraph 3 shall be documented by the asset management company in the client profile and confirmed by the client in writing.

Article 16

Disclosure requirement

1) Appropriate information shall be provided in a comprehensible form to clients or prospective clients about:

- a) the asset management company and its services;
- b) suggested investment strategies and financial instruments; these must also include appropriate guidance on and warning of the risks associated with investments in those instruments or in respect of particular investment strategies; and
- c) costs.

2) The information provided pursuant to paragraph 1 shall ensure that clients and prospective clients are reasonably able to understand the nature and risks of the services and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. The information provided pursuant to paragraph 1(a) and (c) may be provided in a standardized format.

3) In case the asset management company considers, on the basis of the information received under article 15, that the product or service is not appropriate to the client or prospective client, the asset management company shall indicate this to the client or prospective client.

Article 17

Information and solicitation

1) All information, including marketing communications, addressed by the asset management company to clients or prospective clients shall be fair, clear, and not misleading. Marketing communications shall be clearly identifiable as such.

2) The asset management company may neither initiate nor tolerate that parties engage in solicitation on its behalf that it is not permitted to engage in itself.

Article 18

Duty to conclude written agreements

The asset management company must conclude a written agreement with the client on the rights and duties and other conditions, especially:

- a) the type of investments to be made;
- b) the scope of the asset management authorization; and
- c) the compensation of the asset management company.

Article 19

Information requirement

The asset management company is required to inform the client at least once a year about the development of the investments and costs, including presentation of an asset and income statement, and, upon request, to provide the client with information on the services rendered.

Article 20

Prevention of conflicts of interest

1) Asset management companies shall take all reasonable steps to identify conflicts of interest between themselves – including their general management, tied agents, and employees – and their clients or between their clients that may arise in the course of providing their services.

2) Asset management companies shall make and maintain effective organizational and administrative arrangements that prevent conflicts of interest from adversely affecting the interests of their clients.

3) Where organizational or administrative arrangements made by the asset management company are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the asset management company shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business.

4) The Government may provide further details by ordinance.

Article 21

Obligation of secrecy

1) The members of the organs of the asset management companies and their employees as well as any other persons working on behalf of such companies shall be obliged to maintain the secrecy of facts that have been entrusted or made available to them pursuant to their business relationships with clients. The obligation to maintain secrecy shall not be limited in time.

2) Paragraph 1 is without prejudice to the legal provisions concerning the duty to give information or evidence to supervisory organs and criminal courts.

Article 22

Duty to keep and retain records

1) Asset management companies shall keep records of all their activities which shall be sufficient to monitor compliance with the requirements under this Act and with the obligations with respect to clients.

2) Asset management companies shall keep at the disposal of the FMA, for at least five years, the relevant materials relating to transactions with financial instruments (e.g. receipts, account statements).

3) The materials referred to in paragraph 2 may be recorded on image or data carriers if the recordings accurately reflect the materials and can be made readable at any time. The provisions of article 1059 of the Law on Persons and Companies (Personen- und Gesellschaftsrecht, PGR) and the associated ordinance shall apply *mutatis mutandis*.

4) Paragraphs 1 to 3 are without prejudice to the obligation to keep records in this or other laws.

Article 23

Appointment of tied agents

1) Asset management companies may appoint tied agents for the purposes of promoting their services, initiating new business relationships, and providing advice in respect of financial instruments and services offered by the company, as long as the tied agents are entered in the register referred to in paragraph 5 or an equivalent public register of another Member State.

2) An asset management company shall remain fully and unconditionally responsible for any action or omission on the part of its tied agent when acting on behalf of the company.

3) Subject to compliance with the duty to keep and retain records under article 22, paragraph 1, tied agents may handle financial instruments and/or money of clients of the asset management company on behalf of and under the full responsibility of which they are acting. This applies to activities in Liechtenstein and – in the case of cross-border transactions – to activities in the territory of a Member State which allows a tied agent to handle clients' money.

4) The asset management company is required to:

- a) monitor the activities of its tied agents to ensure that they continuously comply with the provisions of this Act;
- b) ensure that a tied agent communicates in which capacity he is acting and which asset management company he is representing when he establishes contact with clients or prospective clients or before he concludes transactions with them;
- c) take appropriate measures in order to avoid any negative impact that the activities of the tied agent not covered by the scope of this Act could have on the activities carried out by the tied agent on behalf of the asset management company.

5) The FMA shall keep a public register of the tied agents. Tied agents shall be entered into the register:

- a) whose domicile or residence is in Liechtenstein or in another Member State, the latter only in the event that the home Member State does not provide for registration of tied agents and the tied agent is appointed by a domestic asset management company;
 - b) who have a good reputation and are trustworthy; and
 - c) who possess appropriate commercial and professional knowledge so as to be able to communicate accurately and in an appropriate form all relevant information regarding the proposed service to the client or prospective client.
- 6) The FMA shall delete the entry in the register if the tied agent no longer meets the conditions for entry set out in paragraph 5.
- 7) The register shall be open to the public and shall be updated monthly. It may be viewed by means of a retrieval procedure.
- 8) The Government may provide further details by ordinance.

Article 24

Professional client

By ordinance, the Government may ease the investor protection provisions with respect to professional clients.

Article 25

Transactions with eligible counterparties

1) With respect to services provided under article 3, paragraph 1(c) to eligible counterparties, asset management companies need not observe articles 15 to 19. If the eligible counterparty does not wish to be treated as such, it may request treatment as a retail client in general or for each individual transaction.

2) Eligible counterparties are legal entities according to chapter I, point 1 (a) – (f) and point 3 of the Annex.

3) The Government may provide further details by ordinance.

C. Accounting and reporting

Article 26

Accounting

Asset management companies that are not companies within the meaning of article 1063 of PGR must comply with the accounting rules of the 1st, 2nd (with the exception of the 3rd subsection), and 4th section of the 20th title of the PGR applicable to companies.

Article 27

Obligation of external audit

1) Each year, the asset management companies must submit to an audit of their conduct of business by an independent audit office pursuant to article 43.

2) At all times, the asset management companies must grant the audit office access to the documents of the company, especially the books, receipts, asset management mandates, business correspondence, and minutes of the board of directors and the general management, and they must provide all information necessary for fulfillment of the audit responsibility.

Article 28

Periodic reports

1) At the latest four months after the end of the business year, asset management companies must compile a business report and submit it to the FMA.

2) Asset management companies are required to periodically submit additional reports to the FMA for statistical and supervisory purposes.

3) The Government shall, in particular, regulate the frequency and content of the reports by ordinance.

IV. Revocation, expiration, and withdrawal of licenses

Article 29

Revocation

- 1) The FMA shall revoke the license if:
 - a) the owner of the license obtained the license by providing false information or in any other unlawful manner; or
 - b) significant circumstances were not known when the license was granted.
- 2) The revocation of a license shall be published in the official publication organs at the expense of the owner of the license.

Article 30

Expiration

- 1) The license shall expire if:
 - a) business activities have not been initiated within one year;
 - b) business activities have no longer been undertaken for at least six months;
 - c) the asset management company forgoes the license in writing;
 - d) bankruptcy proceedings are legally initiated;
 - e) the business is deleted from the Public Registry; or
 - f) the asset management company is converted into a fund management.
- 2) In justified cases and upon application, the FMA may extend the deadlines under paragraph 1(a) and (b).
- 3) The expiration of a license shall be published in the official publication organs at the expense of the owner of the license.

Article 31

Withdrawal

- 1) The FMA shall withdraw the license if:
 - a) the conditions for granting it are no longer fulfilled;
 - b) the legal duties have been seriously violated; or
 - c) the FMA's demands to restore a lawful state of affairs are not met.

2) The withdrawal of a license shall be published in the official publication organs at the expense of the owner of the license.

Article 32

Forced termination

1) A company that provides a service under article 3, paragraph 1 without a license may be terminated by the FMA if the purpose of this Act so requires. In urgent cases, this may be done without prior warning and without imposing a deadline.

2) The FMA shall take the measures necessary for the liquidation and the performance of the current transactions, and it shall issue the requisite instructions to the liquidator.

V. Relationship to the European Economic Area and to third States

A. European Economic Area

Article 33

Foreign activities of Liechtenstein asset management companies

1) Asset management companies whose registered office is in Liechtenstein and which have been granted a license pursuant to this Act may conduct their business in another Member State, either by forming a branch or by virtue of cross-border provision of services, as long as a service under article 3, paragraph 1(a), (b), or (c) is actually performed.

2) The provisions of articles 30g and 30h of the Banking Act shall apply *mutatis mutandis*.

Article 34

Activities in Liechtenstein of foreign asset management companies

1) Asset management companies whose registered office is in another Member State may provide the services under article 3, paragraph 1 in

Liechtenstein, either by forming a branch or by virtue of cross-border provision of services, as long as they are licensed to do so in their home Member State.

2) The provisions of articles 30i, 30k, and 30l of the Banking Act shall apply *mutatis mutandis*.

Article 35

Reporting and information requirement for branches

1) Foreign asset management companies with branches in Liechtenstein must submit reports to the FMA in regular intervals for statistical purposes on the activities of these branches.

2) When exercising the powers delegated to it by this Act, the FMA may require the branches of the asset management companies to provide information that is necessary for monitoring compliance with the regulations applicable to the asset management company.

3) The Government may provide further details by ordinance.

B. Third States

Article 36

Foreign activities of Liechtenstein asset management companies

1) Asset management companies whose registered office is in Liechtenstein and which have been granted a license pursuant to this Act shall – if they intend to actively acquire clients in a third State – demonstrate to the FMA prior to initiating business activities that they hold a relevant license from the State in question or that they are not subject to a licensing requirement in that State.

2) In addition, the provision of services under article 3, paragraph 1 shall be subject to the legal and administrative regulations applicable in the State in question.

Article 37

Activities in Liechtenstein of foreign asset management companies

Asset management companies or asset managers whose registered office or residence is in a third State shall be required to hold a license pursuant to

article 5 for the provision of services under article 3, paragraph 1, if they actively acquire clients in Liechtenstein.

VI. Supervision

A. General provisions

Article 38

Organs

The following organs shall be mandated to implement this Act:

- a) the FMA;
- b) the audit offices; and
- c) the Court of Justice.

Article 39

Official secrecy

1) The organs entrusted with implementation of this Act and any other persons consulted by these organs shall be subject to official secrecy without any time limits with respect to the confidential information that they gain knowledge of in the course of their official activities.

2) The information subject to official secrecy may not be transmitted to others. This is without prejudice to criminal law and other special legal provisions.

3) If bankruptcy proceedings or liquidation has been initiated by a court decision against an asset management company, then confidential information that does not relate to third parties may be used in civil or commercial proceedings, as long as it is necessary for the proceedings in question.

4) Without prejudice to the criminal law cases, the FMA, all other administrative authorities and bodies, and other natural and legal persons may only use information that they receive in accordance with this Act for purposes of fulfilling their responsibilities and tasks within the scope of this Act or for purposes for which the information was given, and/or in the case of administrative and judicial proceedings that specifically relate to the

fulfillment of these tasks. If the FMA or another administrative authority or office or person providing the information gives their consent, however, then the authority receiving the information may use it for other purposes.

5) The provisions of this article do not preclude the FMA from exchanging and transmitting, in compliance with domestic law, confidential information that was not received from a competent authority of another Member State.

Article 40

Supervision taxes and fees

Supervision taxes and fees shall be in accordance with financial market supervision legislation.

B. Financial Market Authority (FMA)

Article 41

Responsibilities

1) The FMA shall monitor the execution of this Act and of the ordinances issued in connection herewith as well as compliance with the Code of Conduct and the ethical rules governing the profession that have been declared binding. The FMA shall take the measures necessary for execution. It shall exercise its powers:

- a) directly;
- b) in cooperation with other supervisory organs; or
- c) through application to the Office of the Public Prosecutor.

2) The FMA shall in particular be responsible for:

- a) issuing, revoking, and withdrawing licenses;
- b) verifying audit reports and annual reports;
- c) naming custodians and deciding on their remuneration;
- d) keeping a directory of the licensed asset management companies and a register of the tied agents;
- e) penalizing administrative offenses in accordance with article 62, paragraph 3.

3) In particular, the FMA may:

- a) demand all information and clarifications necessary for execution of this Act from the asset management companies and their audit offices and employees;
- b) order extraordinary audits or conduct audits itself with respect to certain situations;
- c) issue decisions and orders; after prior warning, it may also publish these decisions and orders, if the asset management company fails to comply;
- d) demand already existing information and recordings of telephone conversations;
- e) demand a practice to be discontinued that conflicts with this Act, the ordinances issued in connection herewith, or the Code of Conduct or the ethical rules governing the profession that have been declared binding.

4) If the FMA learns of violations of this Act or of other abuses, it shall issue the measures necessary to bring about a lawful state of affairs and to remedy the abuses.

5) If there are grounds to assume that an activity subject to this Act is being conducted without a license, the FMA may demand information and documents from the persons concerned as if these persons were subject to this Act.

6) In individual cases, the FMA may inform the public through announcement in the official publication organs that a named undertaking is not authorized to provide services under article 3, paragraph 1. The FMA may also make this information available by means of a retrieval procedure.

7) The FMA shall inform the Government of any general difficulties that Liechtenstein asset management companies may experience in forming an establishment or in providing services under article 3, paragraph 1 in a third State. The Government must transmit this notification to the EFTA Surveillance Authority.

8) The Government may provide further details by ordinance.

Article 42

Data processing

1) The FMA may process all data necessary to fulfill its responsibilities under this Act, including personal profiles and particularly sensitive data concerning administrative or criminal prosecutions of and penalties imposed

on persons responsible for the governance and general management of an asset management company.

2) After termination and deregistration of the asset management company, the processed personal data shall be archived in accordance with the provisions of the Archives Act.

C. Audit offices

Article 43

Principle

1) The following may be appointed as the audit office of asset management companies:

- a) auditors or auditing companies under the Auditors and Auditing Companies Act;
- b) auditing companies under the Banking Act; or
- c) auditing companies under the Investment Undertakings Act.

2) The audit offices are required to notify the FMA of the responsible auditors prior to beginning the audit.

3) The audit office must structure its general management and its organization so that it is able to continuously and properly execute audit mandates.

4) The Government may provide further details by ordinance.

Article 44

Responsibilities

1) The audit office shall verify whether:

- a) the business activities of the asset management companies conform to this Act, the ordinances issued in connection herewith, the Code of Conduct, the ethical rules governing the profession declared to be binding, and any articles of association;
- b) the conditions for the grant of a license are continuously met; and
- c) the business report conforms to the legal requirements.

2) The audit report shall be submitted simultaneously to the FMA and to the board of directors or the general partners of the asset management company at the latest six months after the end of the business year.

3) The Government may provide further details by ordinance.

Article 45

Complaints

1) If the audit office finds violations of legal provisions or other abuses, it shall impose an appropriate deadline on the asset management company to bring about a lawful state of affairs. If the deadline is not met, the audit office shall notify the FMA.

2) The audit office shall notify the FMA immediately if:

- a) the imposition of a deadline appears useless;
- b) it suspects that a person entrusted with the governance of an asset management company has committed a punishable offense; or
- c) other serious abuses exist that conflict with the purpose of this Act, in particular:
 1. if a substantial violation of the licensing conditions or the regulations governing the business conduct of asset management companies exists;
 2. if the continuation of the asset management company is called into question; or
 3. if circumstances exist giving rise to a recommendation in the audit report that the annual statement of accounts should only be approved with restrictions or should be returned to the administration.

3) Furthermore, the audit office shall notify the FMA of any circumstances under paragraph 2 of which it learns while performing its duties with respect to an undertaking that has close links with an asset management company it is mandated to audit.

4) Audit offices that bring circumstances under paragraphs 2 and 3 to the attention of the FMA in good faith do not thereby violate any contractual or legal restrictions on transmitting information to others. To this extent, fulfillment of the information requirement shall not entail any liability of the audit office.

5) In any event, complaints must be included in the audit report to be compiled pursuant to this Act.

Article 46

Audit costs

1) The asset management companies shall bear the costs of the ordinary and the extraordinary audits. The costs of the audit shall be calculated according to a generally recognized rate.

2) Agreement on lump-sum remuneration or a specific expenditure of time for the audit is prohibited.

D. Court of Justice

Article 47

Criminal jurisdiction

The Court of Justice shall have criminal jurisdiction for offenses according to article 62, paragraphs 1 and 2.

E. Appointment of a custodian

Article 48

Principle

- 1) The FMA shall appoint a custodian for:
 - a) asset management companies incapable of acting;
 - b) asset management companies whose license has been revoked or withdrawn.
- 2) The FMA shall have the custodian entered at the Office of Land and Public Registration.
- 3) The asset management company shall communicate the appointment of a custodian to the clients.
- 4) Within one year, the custodian shall apply for the FMA to approve succession arrangements or termination.
- 5) The FMA shall decide on the custodian's remuneration.

F. Official assistance

1. Cooperation with other domestic authorities

Article 49

Principle

1) In the context of supervision, the FMA shall work together with other domestic authorities to the extent necessary for the fulfillment of its responsibilities.

2) The Office of Land and Public Registration shall communicate all changes to entries in the Public Registry concerning an asset management company to the FMA. It shall also grant the FMA electronic access to the data in the Public Registry.

2. Cooperation with competent authorities of Member States

Article 50

Principle

In the context of supervision, the FMA shall work closely together with the competent authorities of the other Member States in accordance with this Act.

Article 51

Joint action against abuses

1) Where the FMA has good reasons to suspect that acts contrary to the provisions of Directive 2004/39/EC, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify this in as specific a manner as possible to the competent authority.

2) Where a competent authority of another Member State notifies the FMA that an undertaking is carrying out or has carried out acts contrary to the provisions of this Act, then the FMA shall take appropriate action against that

undertaking. The FMA shall inform the notifying competent authority of the action taken and the procedure used.

Article 52

Supervisory activities, on-the-spot verifications, and investigations

1) A competent authority of a Member State may request the cooperation of the FMA in a supervisory activity or for an on-the-spot verification or in an investigation.

2) Where the FMA receives a request with respect to an on-the-spot verification or an investigation, it shall, within the framework of its powers:

- a) carry out the verifications or investigations itself;
- b) allow the requesting authority to carry out the verification or investigation; or
- c) allow audit offices or experts to carry out the verification or investigation.

3) The FMA may request the cooperation of the competent authority of a Member State in a supervisory activity or for on-the-spot verification or in an investigation.

Article 53

Exchange of information

1) The FMA shall supply a requesting competent authority of a Member State with all information that this authority needs to carry out its supervisory responsibilities pursuant to Directive 2004/39/EC.

2) When communicating the information, the FMA shall indicate

- a) which information must be considered confidential and subject to official secrecy and therefore may only be disclosed with the express agreement of the FMA; and
- b) for what purposes the communicated information may be used.

3) The FMA may request the competent authorities of other Member States to supply it with all information that the FMA needs to carry out its responsibilities pursuant to this Act. It may transmit the received information to the supervisory organs referred to in article 38. The FMA shall not transmit this information to other bodies or natural or legal persons without the express agreement of the competent authorities which transmitted it and solely for the purposes for which those authorities gave their agreement,

except in duly justified circumstances. In this last case, the FMA shall immediately inform the authority that sent the information.

4) The supervisory organs referred to in article 38, administrative authorities as well as other bodies and natural and legal persons receiving confidential information may use it only in the course of their duties, in particular:

- a) to check that the licensing conditions for asset management companies are met;
- b) to monitor business activities on a non-consolidated or consolidated basis, especially with regard to the capital adequacy requirements imposed by law, administrative and accounting procedures, and internal control mechanisms;
- c) to monitor the proper functioning of trading venues;
- d) to impose sanctions;
- e) in administrative appeals against decisions by the FMA under article 60; or
- f) in the extrajudicial mechanism for investors' complaints provided for in article 61.

5) This article as well as articles 39, 57, and 58 shall not prevent the FMA from transmitting to the central banks, the European System of Central Banks, and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their responsibilities; likewise such authorities or bodies shall not be prevented from communicating to the FMA such information as it may need for the purpose of performing its responsibilities provided for in this Act.

6) The Government may provide further details by ordinance.

Article 54

Refusal to cooperate

1) The FMA may refuse to act on a request for cooperation in carrying out an investigation, on-the-spot verification, or supervisory activity as provided for in article 52 or to exchange information as provided for in article 53 only where:

- a) such an investigation, on-the-spot verification, supervisory activity, or exchange of information might adversely affect the sovereignty, security, or public order of Liechtenstein;

- b) judicial proceedings have already been initiated in respect of the same actions and the same persons before a domestic court; or
- c) final judgment has already been delivered in Liechtenstein in respect of the same persons and the same actions.

2) In the case of such a refusal, the FMA shall notify the requesting competent authority accordingly, providing information on the grounds for refusal.

Article 55

Inter-authority consultation prior to granting a license

1) Prior to granting a license, the FMA shall consult the competent authorities of the other Member State involved if the asset management company is:

- a) a subsidiary of an investment firm or a bank authorized in another Member State;
- b) a subsidiary of the parent undertaking of an investment firm or bank authorized in another Member State; or
- c) controlled by natural or legal persons who simultaneously control an investment firm or bank authorized in another Member State.

2) Prior to granting a license, the FMA shall consult the competent authority of the Member State responsible for the supervision of banks or insurance undertakings if the asset management company is:

- a) a subsidiary of a bank or insurance undertaking authorized in the EEA;
- b) a subsidiary of the parent undertaking of a bank or insurance undertaking authorized in the EEA; or
- c) controlled by natural or legal persons who simultaneously control a bank or insurance undertaking authorized in another Member State.

3) In particular, the FMA shall consult the authorities referred to in paragraphs 1 and 2 when assessing the suitability of the shareholders or members of the board and the reputation and experience of persons who effectively direct the business involved in the management of another undertaking of the same group.

4) Where the FMA is consulted by the authorities referred to in paragraphs 1 and 2, it shall transmit all information regarding the suitability of the shareholders or members and the reputation and experience of persons who effectively direct the business that is of relevance to the other competent

authorities involved, for the granting of a license as well as for the ongoing assessment of compliance with operating conditions.

Article 56

Precautionary measures

1) Where the FMA has clear and demonstrable grounds for believing that an asset management company acting in Liechtenstein under the freedom to provide services or that an asset management company with a branch in Liechtenstein is in breach of the obligations under Directive 2004/39/EC, it shall communicate this to the competent authority of the home Member State, unless the powers of supervision have been conferred on the FMA.

2) If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the asset management company persists in acting in a manner that is clearly prejudicial to the interests of clients in Liechtenstein or the orderly functioning of markets, the FMA, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect clients and the proper functioning of the markets. This shall include the possibility of preventing the offending asset management company from initiating any further transactions in Liechtenstein. The EFTA Surveillance Authority shall be informed of such measures without delay.

3) Where the FMA ascertains that an asset management company with a branch in Liechtenstein is in breach of the legal provisions, Code of Conduct, or ethical rules governing the profession, it shall require the asset management company concerned to put an end to its irregular situation.

4) If the asset management company concerned fails to take the necessary steps, the FMA shall take all appropriate measures to ensure that the asset management company puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the home Member State.

5) If, despite the measures taken by the FMA, the asset management company persists in breaching the provisions referred to in paragraph 3, the FMA may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalize further irregularities and, in so far as necessary, to prevent the asset management company from initiating any further transactions in Liechtenstein. The EFTA Surveillance Authority shall be informed of such measures without delay.

6) Any measure adopted pursuant to this article involving sanctions or restrictions on the activities of an asset management company shall be

properly justified and communicated to the asset management company concerned.

3. Cooperation with competent authorities of third States

Article 57

Cooperation agreements with third States

1) The FMA may conclude cooperation agreements with the competent authorities of third States providing for the exchange of information only if the information disclosed is subject to guarantees of official secrecy at least equivalent to those required under article 39. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

2) Subject to paragraph 1, the FMA may transfer personal data to third States in accordance with article 8 of the Data Protection Act.

3) The FMA may also conclude cooperation agreements providing for the exchange of information with third State authorities, bodies, and natural or legal persons responsible for:

- a) the supervision of banks, other financial institutions, insurance undertakings, financial markets, and asset management companies within the meaning of this Act;
- b) the liquidation and bankruptcy of asset management companies and other similar procedures;
- c) carrying out statutory audits of the accounts of asset management companies and other financial institutions, banks, and insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;
- d) overseeing the bodies involved in the liquidation and bankruptcy of asset management companies and other similar procedures; or
- e) overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, banks, asset management companies, and other financial institutions.

4) When concluding a cooperation agreement under paragraph 3, it must be ensured that the information disclosed is subject to guarantees of official secrecy at least equivalent to those required under article 39. Such exchange

of information must be intended for the performance of the tasks of those authorities or bodies or natural or legal persons.

5) Cooperation agreements by the FMA under paragraphs 1 and 3 shall require the approval of the Government.

6) Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement. This also applies to information provided by third State competent authorities.

Article 58

Exchange of information with third States

1) The FMA may transmit information to the competent authorities of third States if:

- a) this does not adversely affect the sovereignty, the security, or the public order of Liechtenstein;
- b) the disclosure of information is not contrary to the purpose of this Act;
- c) the received information is only used for the supervision of asset management companies;
- d) the employees of the competent authority and the persons mandated by the competent authorities are subject to official secrecy; and
- e) in the case of information originating in another Member State or a third State, express agreement of the authorities which have transmitted it is given and, where appropriate, the information is used solely for the purposes for which those authorities gave their agreement.

2) Information provided under paragraph 1 and information received from competent authorities of third States may only be used by the competent authorities for purposes of article 53, paragraph 4.

3) The FMA may exchange information with the institutions from third States referred to in article 57, paragraph 3 only if these institutions require the information for the performance of their responsibilities under supervision law.

4) Information provided under paragraph 3 shall be subject to official secrecy. Information originating in a third State may not be disclosed without the express agreement of the competent authorities which have transmitted it and solely for the purposes for which those authorities gave their consent.

5) At any time, the FMA may obtain information concerning the activities of Liechtenstein asset management companies in third States and the economic circumstances of foreign asset management companies whose activities may affect the Liechtenstein money and credit system, if this is necessary for the purposes of this Act.

6) The provisions in paragraphs 1 to 5 shall only be applied to the extent that international agreements or cooperation agreements do not specify otherwise.

VII. Procedure, legal remedies, and out-of-court settlements

Article 59

Decisions and orders

1) If violations of the provisions in this Act or the ordinances issued in connection herewith are found and, if the situation is not redressed despite warnings and the imposition of deadlines, the FMA shall take the necessary decisions and appropriate measures.

2) Unless otherwise specified by this Act, the National Administration Act shall apply.

Article 60

Legal remedies

1) Decisions and orders of the FMA may be appealed within 14 days of service to the FMA Complaints Commission.

2) Decisions and orders of the FMA Complaints Commission may be appealed within 14 days of service to the Administrative Court.

3) In the interest and/or on the initiative of the clients, the Office of Economic Affairs shall have all legal means and remedies at its disposal to ensure that the provisions of this Act are applied.

Article 61

Extrajudicial arbitration body

1) The Government shall appoint an arbitration body to settle disputes between clients and asset management companies concerning the services provided.

2) The arbitration body shall be responsible for mediating as appropriate in disputes between the parties and in this way for reaching a settlement between the parties.

3) If no settlement between the parties can be reached, then the parties shall be referred to the ordinary legal process.

4) The Government shall provide further details by ordinance, especially concerning the organizational structure, the composition, and the procedure.

VIII. Penal provisions

Article 62

Misdemeanors and administrative offenses

1) The Court of Justice shall punish with imprisonment of up to one year or with a fine of up to 360 daily rates for committing a misdemeanor anyone who:

- a) as a member of an organ of, an employee of, or any other person acting on behalf of an asset management company, or as an auditor violates secrecy obligations or who induces such a violation or attempts to induce it;
- b) performs or arranges to perform a service within the meaning of article 3, paragraph 1 without a license; or
- c) accepts or holds assets of third parties in breach of article 3, paragraph 3.

2) The Court of Justice shall punish with imprisonment of up to six months or with a fine of up to 180 daily rates for committing a misdemeanor anyone who:

- a) violates conditions imposed in connection with a license;
- b) violates the prohibition set out in article 11 against using nomenclature that indicates activities as an asset management company;
- c) gives false information to the FMA or the audit office;

- d) does not keep account books properly or does not retain account books and receipts;
- e) makes false statements or withholds significant facts in the periodic reports or notifications;
- f) as an auditor, grossly violates his responsibilities, in particular by making untrue statements in the audit report or withholding significant facts, by failing to make required requests to the management company, or by failing to submit required reports and notifications;
- g) does not meet the minimum capital requirement set out in article 6, paragraph 1(k); or
- h) does not maintain adequate capitalization as set out in article 8.

3) The FMA shall punish with a fine of up to 100,000 Swiss francs for committing an administrative offense anyone who:

- a) fails to compile the periodic reports as required or submits them late or not at all;
- b) fails to have a regular audit or an audit required by the FMA conducted as a whole or with respect to individual areas;
- c) fails to fulfill his responsibilities vis-à-vis the audit office;
- d) fails to submit the required reports and notifications to the FMA or submits them late;
- e) fails to comply with a demand to bring about a lawful state of affairs or with any other order by the FMA;
- f) fails to comply with a demand to cooperate in an investigation procedure of the FMA;
- g) provides impermissible, false, or misleading information while soliciting for an asset management company;
- h) fails to comply with the Code of Conduct (articles 15 to 19) and the ethical rules governing the profession declared to be binding;
- i) delegates activities under article 12 to third parties without approval;
- k) does not make or maintain effective organizational and administrative arrangements that prevent conflicts of interest from adversely affecting the interests of their clients;
- l) violates his obligations when appointing tied agents under article 23; or
- m) violates his obligations as a tied agent under article 23.

4) If the offenses are committed negligently, the maximum penalties shall be reduced by half.

5) The general part of the Criminal Code shall apply *mutatis mutandis*.

6) The FMA may announce the imposition of penalties and fees, if this realizes the purpose of this Act and is proportionate.

Article 63

Responsibility

If violations are committed in the business operations of a legal person, a general partnership, or a limited partnership, then the penal provisions shall apply to the persons that acted or should have acted on their behalf, but with joint and several liability of the legal persons or the company for criminal and administrative fines.

Article 64

Communication requirement of other authorities

The courts shall submit complete copies to the FMA of all judgments and decisions to discontinue proceedings that affect members of the board or general management of asset management companies and audit offices.

IX. Transitional and final provisions

Article 65

Transitional provisions

1) Natural persons who, upon entry into force of this Act, are entitled to perform asset management on a professional basis – especially pursuant to article 7, paragraph 1(c) of the Professional Trustees Act or pursuant to article 65(a) of the Lawyers Act – as well as persons who pass the professional trustees examination or the qualification examination for professional trustees at the latest one year after entry into force of this Act are deemed to fulfill the conditions set out in article 7, paragraph 1(c).

2) The consideration of other obligations under article 7, paragraph 1(b) shall not apply to a person referred to in paragraph 1, provided that the person is not already a general manager of another asset management company.

3) Already existing legal persons, trusts, and other collectives and asset entities must fulfill the requirements set out in article 11 from 1 January 2008. If they do not comply, the FMA may terminate them without prior notice pursuant to article 32.

4) For already existing clients of persons referred to in paragraph 1, the obligations set out in articles 15 and 16 must be fulfilled within two years of entry into force of this Act.

Article 66

Implementing ordinances

The Government shall issue the ordinances necessary to implement this Act.

Article 67

Entry into force

This Act shall enter into force on 1 January 2006.

On behalf of the Reigning Prince:

signed *Alois*

Hereditary Prince

signed *Otmar Hasler*

Prime Minister

Annex

(Article 4, paragraph 1(e))

Professional clients**I. Categories of clients who are considered to be professionals**

The following entities shall be regarded as professional clients for the purposes of this Act with respect to all services under article 3, paragraph 1 and financial instruments:

1. Entities which are authorized or which are required to be regulated to operate in the financial markets, namely:
 - a) banks;
 - b) investment firms;
 - c) other financial institutions;
 - d) insurance undertakings;
 - e) undertakings for collective investment (investment undertakings) and their management companies;
 - f) pension funds and their management companies;
 - g) commodity and commodity derivatives dealers; or
 - h) other institutional investors;
2. Large undertakings meeting two of the following size requirements on a company basis:
 - a) balance sheet total: EUR 20,000,000 or the equivalent in Swiss francs;
 - b) net turnover: EUR 40,000,000 or the equivalent in Swiss francs;
 - c) own funds: EUR 2,000,000 or the equivalent in Swiss francs
3. Government, municipalities, public bodies that manage public debts, central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB, and other similar international organizations;
4. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitization of assets or other financing transactions.

The entities mentioned above may request treatment as a non-professional client. In this event, the asset management companies may provide a

higher level of protection. Where the client of an asset management company is an entity referred to above, the asset management company must inform it prior to any provision of services that, on the basis of the information available to the company, the client is deemed to be a professional client, and will be treated as such unless the asset management company and the client agree otherwise. The asset management company must also inform the client that it can request a variation of the terms of the agreement in order to secure a higher level of protection.

It is the responsibility of the client considered to be a professional client to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

This higher level of protection will be provided when a client who is considered to be a professional client enters into a written agreement with the asset management company to the effect that it shall not be treated as a professional for the purposes of the applicable Code of Conduct. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

II. Clients who may be treated as professionals on request

1. Identification criteria

Clients other than those mentioned in chapter I of this Annex, including public sector bodies and private individual investors, may also be allowed to waive some of the protections afforded by the Code of Conduct.

Asset management companies may therefore treat any of the above clients as professionals, provided the relevant criteria and procedures mentioned below are fulfilled. These clients should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in chapter I of this Annex.

Any such waiver of the protection normally afforded by the Code of Conduct shall be considered valid only if an adequate assessment of the expertise, experience, and knowledge of the client, undertaken by the asset management company, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making its own investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed under special laws could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities,

the person subject to the above assessment should be the person authorized to carry out transactions on behalf of the entity.

In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:

- a) The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.
- b) The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000 or the equivalent in Swiss francs.
- c) The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

2. Procedure

The clients defined above may waive the protections afforded by the Code of Conduct only where the following procedure is followed:

- a) They must state in writing to the asset management company that they wish to be treated as a professional client, either generally or in respect of a particular service or investment transaction, or type of transaction or product.
- b) The asset management company must give them a clear written warning of the protections they may lose.
- c) They must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, asset management companies are required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in point 1.

However, if clients have already been categorized as professionals under parameters and procedures similar to those above, it is not intended that their relationships with asset management companies should be affected by any new rules adopted pursuant to this Annex.

Asset management companies must implement appropriate written internal policies and procedures to categorize clients. Professional clients are responsible for keeping the asset management company informed about any change which could affect their current categorization. Should the asset management company become aware, however, that the client no longer fulfills the initial

conditions which made it eligible for treatment as a professional client, the asset management company must take appropriate action.