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Instruction – Register of Beneficial Owners of Legal Entities

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1. Introduction

Art. 30 of Directive (EU) 2015/849 (hereinafter: “the AMLD”) demands that a central register be installed by Member States to collect information on corporations and other legal entities registered within their territory and thus hold “adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests”. A similar requirement applies to trusts and similar legal arrangements in terms of Art. 31 of the AMLD.

To implement these requirements, the Act on the Register of Beneficial Owners of Legal Entities (VwbPG) was issued in Liechtenstein.

The data to be entered in the Register is to be that of the “beneficial owners” as defined in due diligence legislation. Furthermore, foreign trusts and other legal arrangements are also obliged under certain conditions to record the data on the beneficial owners in the Register.

2. Analogous application of FMA Communication 2015/7 and FMA Instruction 2018/7

The term “beneficial owner” is used both in the Law on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (DDA) and in the VwbPG. This makes it clear that a legal entity’s beneficial owners established or being established under the rules of due diligence legislation must be entered in the Register.

The interpretation of due diligence legislation is up to the Liechtenstein Financial Market Authority (FMA). This applies to the interpretation of due diligence legislation by way of directives, instructions, and communications as well as through decisions in individual cases. Concerning the establishment of beneficial owners pursuant to the DDA, the FMA issued FMA Communication 2015/7. The remarks made in FMA Communication 2015/7 are applicable *mutatis mutandis* to the purposes of interpreting the VwbPG as far as not laid down otherwise herein.

FMA Instruction 2018/7 (General and sector-specific interpretation of due diligence law) is applicable *mutatis mutandis* to the interpretation of the VwbPG with regard to establishing the beneficial owners of undertakings for collective investment as far as not laid down otherwise herein.

What is also applicable *mutatis mutandis* is FMA Instruction 2018/7 with regard to laying down the third countries in which due diligence and record-keeping duties as well as supervision standards apply that are in accordance with the requirements laid down in the AMLD.

3. Relationship between DDA and VwbPG

The relationship between the DDA and the VwbPG can be illustrated by the following overview:

Level of the law:

DDA	Subject	VwbPG
Art. 2/1/e	Definition of “beneficial owner”	Art. 2/1/a
Art. 2/1/f	Definition of “legal entity”	Art. 2/1/c ¹
---	Definition of “unattached legal entities pursuant to Schedule 1”	Art. 2/1/d ²
Art. 7/1-3	Identification and verification of the identity of the beneficial owner	Art. 3/1-3
Art. 24	Inspections by the FMA	Art. 25

Level of the ordinance:

DDO	Subject	VwbPV
Art. 3/1/a	Beneficial owners in corporations and similar legal entities or in unattached legal entities pursuant to Schedule 1 VwbPG	Art. 2/1/a ³
Art. 3/1/b	Beneficial owners in foundations/trusts and similar legal entities or in non-unattached legal entities pursuant to Schedule 1 VwbPG	Art. 2/1/b
Art. 3/1/d	Regional or public authorities in EEA Member States or in Switzerland or institutions of the EU and the EEA	Art. 2/1/c ⁴
Art. 3/1/e	<i>Liechtensteinische Post Aktiengesellschaft</i>	Art. 2/1/d ⁴
Art. 3/1/f	Domestic banks, investment firms, fund trading platforms, central depositaries, and insurance companies	Art. 2/1/e ⁴
Art. 3/1/g	Foreign banks, investment firms, fund trading platforms, central depositaries, and insurance companies that meet the requirements of Art. 14(1)(b) DDA	Art. 2/1/f ⁴
Art. 3/1/h	Beneficiaries in terms of para. (1)(b)(4) that demonstrably are legal entities in terms of Art. 2(1)(b) DDA	Art. 2/1/h ⁵

¹ This shows one of the pivotal differences between the two laws. The DDA is about persons subject to due diligence having to meet due diligence obligations with regard to all Liechtenstein and foreign legal entities in the scope of application of the DDA. The definition of legal entities in the VwbPG, however, only includes those legal entities that are required to enter their beneficial owners in the Register. See item 4 below.

² This term is unknown to the DDA. Ultimately, however, what the VwbPG does is using it to draw a line between the applicability of the rules to corporations and similar legal entities pursuant to Schedule 1 VwbPG as opposed to foundations/trusts and similar legal entities pursuant to Schedule 2 VwbPG. This is in accordance with the corresponding delimitation in the DDA (use of Form C vs. Form T).

³ In the VwbPV (Ordinance on the Register of Beneficial Owners of Legal Entities), the passage “and provided there are no grounds for suspicion” (Art. 3(2)(2) of the Ordinance on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism, DDO) was not adopted.

⁴ Pursuant to the DDO, it is the legal entity itself that is the beneficial owner in these cases, while pursuant to the VwbPV it is the members of the executive body of the legal entity subject to registration who are deemed to be the beneficial owners.

⁵ Here, the legal entity that is a beneficiary is considered to be the beneficial owner both in the DDO and in the VwbPV.

Art. 3/1/i	Tax-exempt institutions for occupational retirement provision domiciled in the EEA or in Switzerland	Art. 2/1/g ⁴
Art. 3/3	Associations subject to registration in the Commercial Register, general partnerships, and limited partnerships that have common-benefit or charitable objects pursuant to Art. 2(1)(b) DDA	Art. 2/1/i ⁴
Art. 3/4	Legal entities whose shares or voting rights are directly or indirectly held by legal entities whose shares are traded on a regulated market that is subject to disclosure obligations equivalent to EEA law or equivalent international standards ensuring adequate transparency of the information on ownership	Art. 2/1/k ⁶
Art. 22b/3	Legal entities in the form of an undertaking for collective investment in transferable securities (UCITS) pursuant to the Act Concerning Specific Undertakings for Collective Investment in Transferable Securities UCITSG) or in the form of an alternative investment fund pursuant to the Act Concerning the Managers of Alternative Investment Funds (AIFMG), as far as Art. 22b(3) of the DDO applies	Art. 2/1/l ⁷
Art. 22b/3a	Legal entities: 1. in the form of a UCITS pursuant to the UCITSG or in the form of an alternative investment fund pursuant to the AIFMG, as far as Art. 22b(3) of the DDO does not apply; or 2. in the form of an investment undertaking pursuant to the Investment Undertakings Act	Art. 2/1/m ⁸
Art. 3/2	Control	Art. 2/2
Art. 2/1/r DDA	Members of the executive/management body	Art. 2/3
Annex 1	Form C (DDO) / Form C-VwbP (VwbPV)	Schedule 1
Annex 1	Form T (DDO) / Form T-VwbP (VwbPV)	Schedule 2

The members of the executive or management body in terms of Art. 2(3) VwbPV are considered to be the members of the body charged with the operative management and representation of the legal entity. Typically, it is therefore all members of the management who must be recorded here. If there is no management, all members of the board of

⁶ Pursuant to the DDO, the establishment of the beneficial owners can be refrained from in these cases, while pursuant to the VwbPV, the members of the management body of the legal entity listed on the regulated market are considered to be the beneficial owners.

⁷ If the requirements of Art. 22b(3) DDO are met, the obligation pursuant to Art. 6(1) and Art. 7(1) and (2) DDA can be fulfilled by the person subject to due diligence establishing the identity of the subscribing institution on the basis of a share register or a subscription certificate. Pursuant to the VwbPV, the members of the management body are in this case considered to be the beneficial owners. See also item 4.7 below.

⁸ Pursuant to the VwbPV, natural persons are relevant who pursuant to Art. 4(1)(a) or (b)(4) are considered beneficial owners of the legal entity. Natural persons pursuant to Art. 4(1)(b)(4) are only considered beneficial owners if their beneficial interest in the legal entity in question is 25 % or more. At the end of the day, this is identical to what is laid down in due diligence legislation (taking into account FMA Communication 2015/7). See also item 4.7 below.

directors, the supervisory board, or any body with a comparable function must be entered in the Register.

4. Obligated legal entities

4.1 Fundamentals

Legal entities pursuant to Art. 2(1)(c) VwbPG are obliged to obtain the necessary information concerning their beneficial owners and to forward this information to the Office of Justice at the online portal of the Office of Justice at <https://vwb.llv.li>.

These legal entities are in particular:

Domestic legal entities pursuant to Schedule 1 VwbPG (see item 4.2 below);

Domestic legal entities pursuant to Schedule 2 VwbPG (see item 4.3 below; there is no obligation to register for trusts managed by a person subject to due diligence in terms of Art. 3(1)(k) DDA if proof is provided that the beneficial owners are entered in a register of another EEA Member State. With regard to trusts in terms of Schedule 2, “to manage” means that a person subject to due diligence exercises the function of trustee or co-trustee. Accordingly, the information on the beneficial owners of the trust in question are available in Liechtenstein through these persons subject to due diligence);

Trusts formed abroad or similar legal arrangements managed in Liechtenstein (“foreign trusts”, see item 4.4 below; there is no obligation to register if proof is provided that the beneficial owners are entered in a register of another EEA Member State);

Trusts or similar legal arrangements that are managed in a third country and for which in Liechtenstein a business relationship with a person subject to due diligence has been started or real estate has been purchased (“trusts from third countries”, see item 4.5 below; there is no obligation to register if proof is provided that the beneficial owners are entered in a register of another EEA Member State).

4.2 Legal entities pursuant to Schedule 1 VwbPG

The following legal entities are legal entities pursuant to Schedule 1 VwbPG:

1. Associations (*Vereine*, Art. 246 et sqq. PGR), as far as they are subject to registration in the Commercial Register;
2. Public limited companies (*Aktiengesellschaften*, Art. 261 et sqq. PGR);
3. Partnerships limited by shares (*Kommanditaktiengesellschaften*, Art. 386 et sqq. PGR);
4. Companies limited by units (*Anteilsgesellschaften*, Art. 375 et sqq. PGR);
5. Limited liability companies (*Gesellschaften mit beschränkter Haftung*, Art. 389 et sqq. PGR);
6. Co-operative societies (*Genossenschaften*, Art. 428 et sqq. PGR);
7. Mutual insurance companies (*Versicherungsvereine auf Gegenseitigkeit*) and auxiliary funds (*Hilfskassen*, Art. 496 et sqq. PGR);
8. Establishments (*Anstalten*, Art. 534 et sqq. PGR), as far as they are not covered by Schedule 2;

9. Public service undertakings (*gemeinwirtschaftliche Unternehmungen*, Art. 571 et sqq. PGR);
10. General partnerships (*Kollektivgesellschaften*, Art. 689 et sqq. PGR);
11. Limited partnerships (*Kommanditgesellschaften*, Art. 733 et sqq. PGR);
12. Trust enterprises (Trust reg, *Treuunternehmen*; Art. 932a PGR), as far as they are not covered by Schedule 2;
13. European Economic Interest Groupings (EEIG);
14. Societas Europaea (SE);
15. European Cooperative Societies (Societas Cooperativa Europaea, SCE).

If a legal entity has one of the company forms listed above, the electronic Form C-VwbP pursuant to Schedule 1 VwbPV must be used for registering the beneficial owners if pursuant to Art. 2(1)(d) VwbPG:

1. no legal entity pursuant to Schedule 2 VwbPG or no corresponding foreign legal entity holds or controls an ownership interest or voting rights of 25 % or more;
2. no legal entity pursuant to Schedule 2 VwbPG or no corresponding foreign legal entity participates with 25 % or more in the profits; and
3. no legal entity pursuant to Schedule 2 VwbPG or no corresponding foreign legal entity exercises control in any other way.

With non-unattached legal entities pursuant to Schedule 1 VwbPG, Form T-VwbP pursuant to Schedule 2 VwbPV must be used. If there are additional beneficial owners pursuant to Art. 2(1)(a) VwbPV, Form C-VwbP must be used for these. This would be the case for example where 50 % of a corporation are held by a foundation and 50 % by a natural person (or by another corporation).

4.3 Legal entities pursuant to Schedule 2 VwbPG

The following legal entities are legal entities pursuant to Schedule 2 VwbPG:

1. Establishments (*Anstalten*) organised similarly to foundations (Art. 543(1) sentence 2 PGR) and establishments whose beneficiaries are third parties⁹ (Art. 545 (1^{bis}) PGR);
2. Foundations (*Stiftungen*; Art. 552 § 1 PGR);
3. Trusts (*Treuhänderschaften*; Art. 897 et sqq. PGR)¹⁰;
4. Trust enterprises (*Treuunternehmen*; Trust reg.) organised similarly to foundations¹¹ (Trust reg.; Art. 932a PGR).

⁹ As long as no third parties have been appointed as beneficiaries (recipients of benefits, usufructuaries), it is presumed pursuant to Art. 545 (1^{bis}) PGR that the holder of the founder's rights is himself the beneficiary. If no third parties have been appointed as beneficiaries and the founder's rights do still exist, the establishment is considered to be not structured similarly to a foundation and is therefore handled pursuant to Schedule 1 VwbPG. If there are founder's rights in addition to existing beneficial interest regulations, the (economic) holder of these founder's rights must be recorded in addition as a beneficial owner pursuant to Art. 2(1)(b) VwbPV. For the entire topic for the field of application of the DDA, see also FMA Communication 2015/07 concerning the criteria for categorisation as a "foundation organised similarly to a foundation".

¹⁰ Foreign trusts are only considered to be Liechtenstein legal entities if they were deposited at the Office of Justice pursuant to Art. 902 PGR.

¹¹ What has been said in footnote 10 applies here mutatis mutandis.

For legal entities pursuant to Schedule 2 VwbPG, Form T-VwbP pursuant to Schedule 2 VwbPV must be used.

4.4 Trusts formed abroad but managed in Liechtenstein

Trusts or similar legal arrangements formed abroad (under foreign law) must enter their beneficial owners in the Register if they are managed in Liechtenstein (Art. 2(1)(c)(2) VwbPG). A foreign trust is deemed to be managed in Liechtenstein if a person subject to due diligence pursuant to Art. 3 DDA carries out the function of trustee or co-trustee. If a trustee or co-trustee is resident or domiciled in another EEA Member State, there is no obligation to register in Liechtenstein, provided that the registration has been made in a register of another EEA Member State. This rule only concerns foreign trusts and does not concern any other type of foreign legal entity, such as foreign foundations¹².

4.5 Trusts managed in a third country

Trusts or similar legal arrangements that are managed in a third country and for which in Liechtenstein a business relationship with a person subject to due diligence has been established or real estate has been purchased must enter their beneficial owners in the Register pursuant to Art. 2(1)(c)(3) VwbPG. However, there is no obligation to register if proof is supplied that the beneficial owners are entered in a register of another EEA Member State. The restriction “business relationship with a person subject to due diligence” was included in the wording of the law to give trusts from third countries legal certainty about the relevant business relationships. Trusts from third countries must provide proof of entry in the register of another EEA Member State by demonstrating the corresponding entry through documentation.¹³

Generally, a Liechtenstein law such as the VwbPG will not have any effect on persons or legal entities resident or domiciled in third countries. Nevertheless, Liechtenstein was under the obligation of implementing this part of the AMLD, too. After all, by establishing a business relationship with persons in Liechtenstein, a trust from a third country gains a strong relationship to the Liechtenstein territory. In any case, it can be noted that it is only the trusts from third countries (i.e. the corresponding trustees and co-trustees) that are subject to the reporting duty and never any Liechtenstein persons¹⁴.

¹² For the topic as a whole, see also Report and Motion No. 75/2020, page 41.

¹³ For the topic as a whole, see also Report and Motion No. 75/2020, page 41 et seq.

¹⁴ For the topic as a whole, see also Report and Motion No. 75/2020, page 42 et seq.

4.6 Proof of entry in a register of another EEA Member State

A foreign trust / a trust from a third country must provide proof of entry in the register of another EEA Member State by demonstrating the corresponding registration through documentation. However, the Liechtenstein Register will display neither the name of the foreign trust / the trust from the third country nor the EEA Member State in which registration took place. It is, however, possible that the evidence provided is reviewed in the course of inspections by the FMA or the Office of Justice. However, it will not be possible to carry out such inspections with regard to trusts from third countries, since no person and no legal entity in Liechtenstein has to fulfil any obligations to such effect.¹⁵

4.7 Undertakings for collective investment

Pursuant to Art. 3(1)(c) DDA, undertakings for collective investment (UCITS/AIF/IU) marketing their units or shares are subject to the DDA. In this context, the due diligence obligations must be fulfilled by the self-managed collective investment undertaking, and in the case of externally managed collective investment undertakings, by the manager pursuant to the UCITSG or IUG or the manager of alternative investment funds (AIFM) pursuant to the AIFMG. It is laid down in Art. 22b(3) DDO in this context that for UCITS and AIF only the identity of the subscribing institution (such as a bank) has to be established rather than that of the beneficial owner. Art. 2(1)(l) VwbPV, however, provides that in these cases, the members of the executive or management body must be reported as the beneficial owners. In the case of self-managed investment undertakings (investment company, investment limited partnership, or investment partnership of limited partners), the members of the investment undertaking's management body must be entered on Form C-VwbP. If the investment undertaking is externally managed, however, the executive or management body of the management company or the AIFM must be recorded on Form C-VwbP. With collective trusteeships, the members of the executive or management body of the management company or the AIFM must be entered on Form T-VwbP.

Where Art. 22b(3) DDO is not applicable because

- the requirements of Art. 22b(3)(a), (b), or (c) DDO are not met;
- the entity in question is an investment undertaking pursuant to the Investment Undertakings Act (IUG); or
- the entity in question is an undertaking for collective investment (UCI) that serves the individual structuring of assets,

the natural persons who pursuant to Art. 2(1)(a) or (b) VwbPV are the beneficial owners of the legal entity are considered to be the beneficial owners.

Pursuant to Art. 2(1)(m) VwbPV, natural persons in terms of Art. 2(1)(b)(4) VwbPV are only then considered to be the beneficial owners of a collective trusteeship if they are beneficiaries of the legal entity concerned at a quota of 25 % or more. These persons must be entered in Form T-VwbP in the role of founder and beneficiary in addition to the members of the management body.

¹⁵ For the topic as a whole, see also Report and Motion No. 75/2020, page 43 et seq.

A UCI must be entered in the Register if it is a legal entity pursuant to Schedule 1 or Schedule 2 VwbPG. UCIs in the form of a contract do not fulfil this criterion, which is why there is no obligation of registration in these cases.

4.8 Protected cell companies

With protected cell companies (PCC) pursuant to Art. 243 et sqq. PGR, there is no obligation to report the beneficial owners of a cell pursuant to Art. 243(2) PGR, since pursuant to Art. 243(3) PGR, these cells do not constitute legal entities in terms of Schedule 1 or Schedule 2 VwbPG. However, the beneficial owners of the legal entity itself must be reported pursuant to the VwbPG.

4.9 Legal entities in bankruptcy

In the event of bankruptcy proceedings, the obligation to record the beneficial owners is suspended from the time of submitting the application for bankruptcy until the cancellation of bankruptcy or the dismissal of the application for bankruptcy. If bankruptcy is cancelled, the obligation to record the beneficial owners revives.

5. Reporting duties

The reporting duties of legal entities are laid down in Art. 4 VwbPG. Generally, the Office of Justice must be provided with the relevant data within 30 days from the event relevant for the legal entity in question (e.g. entry in the Commercial Register or formation) or, as the case may be, within 30 days from taking knowledge of relevant changes.

6. Reporting of discrepancies

See Art. 9 VwbPG and Art. 9 VwbPV.

A discrepancy is to be reported only if the person subject to due diligence has pointed out the incorrect or incomplete entry to the legal entity and the latter has not remedied this within 30 days from knowledge.

The Office of Justice will note the discrepancy report in the Register and will take the measures necessary to remove the discrepancy. As a first measure, the Office of Justice will inform the legal entity in question of the report and request the legal entity to remedy the discrepancy.

The reporting party will be informed that the discrepancy report has been received. The reporting party will neither be involved in nor be informed about the further procedure to remedy the discrepancy.

7. Documentation

In contrast to the old VwEG, the VwbPG does not include any provisions concerning the documentation of establishing the beneficial owner (pursuant to Art. 3(4) and Art. 4(4) VwEG, the Liechtenstein legal entities or the persons subject to due diligence had to review and document the correctness of the information concerning the beneficial owners).

The VwbPG requires legal entities to obtain the data concerning their beneficial owners. This means in substantive terms that they have to establish their beneficial owners in accordance with the requirements of due diligence legislation. For the persons subject to due diligence, the record-keeping requirements and their extent are therefore laid down in the DDA; the VwbPG does not state any new obligations in this regard.

It was considered unnecessary to introduce a VwbPG-specific record-keeping duty (in particular for legal entities which do not involve persons subject to due diligence, i.e. typically legal entities with a business licence), since the data in question is contained in the Register. In addition, it is expected that the ownership situation e.g. of an SME with a business licence will (also) be known and demonstrable as well as verifiable by third parties. If there is reason to assume that a legal entity in which no person subject to due diligence is involved has not complied with its obligations under the VwbPG, the Office of Justice may carry out inspections pursuant to Art. 25 VwbPG.

8. Disclosure of data

Data will be disclosed exclusively to fulfil due diligence obligations or to carry out acts to combat money laundering, predicate offences to money laundering, and terrorist financing.

8.1 Disclosure to domestic authorities by retrieval procedure

See Art. 13 VwbPG and Art. 13 VwbPV.

8.2 Disclosure to banks and financial institutions

See Art. 15 VwbPG, Art. 7, 8, 15, and 16 VwbPV.

Data is disclosed to banks and financial institutions domiciled in Liechtenstein and in another EEA Member State. Apart from this, disclosure to banks domiciled in certain third countries is also possible. In the third countries concerned, the requirements laid down in the AMLD and the data protection requirements (Art. 45 of Regulation (EU) 2016/679) must be met.

8.3 Disclosure to domestic persons subject to due diligence

See Art. 16 VwbPG, Art. 7, 8, and 15 - 17 VwbPV.

8.4 Disclosure to third parties

See Art. 17 VwbPG, Art. 7, 8, and 15 - 17 VwbPV.

8.5 Limitations to the disclosure of data

See Art. 16 - 18 VwbPG and Art. 18 VwbPV.

9. Transitional provisions

Domestic legal entities pursuant to Schedule 1 and 2 VwbPG which already existed when the VwbPG entered into force on 1 April 2021 must enter the required information as well as any changes within six months from the time the Act entered into force, i.e. until the end of September 2021¹⁶.

Domestic legal entities pursuant to Schedule 1 and 2 VwbPG which are registered at, reported to, or deposited with the Commercial Register after 1 April 2021 are not subject to the transitional provisions. These legal entities must provide the Office of Justice with the required information within 30 days from the event relevant for the legal entity in question (e.g. entry in the Commercial Register or formation), or within 30 days from knowledge of the change in question¹⁷.

¹⁶ Art. 34(1) VwbPG.

¹⁷ See also item 5 above.