F.L. TRENDING 2001

Professional Diligence in Liechtenstein

New Rules Set High International Standards – Banking Secrecy Remains Untouched

On 1 January 2001, Liechtenstein put a new act on professional diligence obligations for financial transactions into force. In parallel, specially trained staff has been made available to supervise compliance with due diligence legislation. These efforts have been officially acknowledged by the Financial Action Task Force (FATF) of the Organisation for Economic Co-operation and Development (OECD). It has assessed Liechtenstein as a state that supports international efforts to fight money laundering. For investors, this rating is another clear indication that the Liechtenstein legal framework for financial services meets the highest international quality and safety standards.

Despite stricter provisions on professional diligence with financial transactions, the Liechtenstein laws on banking secrecy have remained untouched.

A Consequence of Globalisation

However, the new Due Diligence Act (DDA) is not about banking secrecy but about fighting money laundering. Globalisation has not only brought new impulses for international business but also made the fight against organised crime and money laundering (which goes with it) a worldwide problem that does not know national borders.

This is why money laundering is a punishable offence in many countries. Liechtenstein issued an amendment to its Penal Code as early as in 1996, and has expressly laid down the objective of fighting money laundering and organised crime in the new DDA.

Comprehensive Diligence Duties

The new DDA regulates all persons and companies who on a professional basis accept or keep in custody third parties' assets or help to invest or transfer them. The DDA names banks and finance companies, lawyers, legal agents and trustees, life insurance companies, Liechtenstein branches of foreign investment firms, as well as the Liechtenstein Postal Services and the exchange offices.

Identification of Contract Partners

All persons subject to the DDA have to identify their contract partners by passport or identity card when enter-

History of diligence legislation

In Liechtenstein, professional diligence duties had been regulated long before the current Due Diligence Act (DDA) entered into force. As early as in 1977, the Government entered into an agreement with the three banks active at that time in Liechtenstein, in which the banks agreed to check the identities of their customers.

That agreement was extended in 1989. Not only the customer, but also the beneficial owner had to be identified. If that identification was carried out by a person obliged to professional secrecy, such as a lawyer or a trustee, it was not obliged to forward the information to the bank.

The DDA of 1996, which entered into force on 1 January 1997, provided a legal framework to professional diligence duties. It no longer applied to banks alone but also to finance companies, lawyers, investment companies, trust companies and life insurance companies.

On 1 January 2001, a new DDA entered into force, which is described in detail in this issue of F.L. Trending.

Contract partners and beneficial owners to be identified using standardised rules.

Due Diligence Act

(Excerpts – Non official Translation)

Art. 1 – Subject

This law regulates the application of due diligence in financial transactions and helps to combat money laundering and organised crime within the meaning of the Criminal Code.

Art. 4 – Identification of the Contract Partner

1) Persons subject to this law are required to identify their contract partner by means of supporting evidence when entering into business relations in accordance with Art. 1.

Art. 5 – Establishing the Beneficial Owner

1) Persons subject to the law are required, when entering into business relations in accordance with Art. 1, to establish the beneficial owner and to record name and address in the files.

ing into business relations. The ordinance pertaining to the DDA specifies that the name, first name, date of birth, residential address, country of residence, and nationality of the contract partner must be laid down in the records.

Representatives of legal entities must provide an extract from the commercial register or an equivalent document that must not be older than six months. An equivalent document would be an official confirmation issued by a national authority, statutes, formation documents, a confirmation issued by the auditor of the annual accounts or an official authorisation by the competent authority to carry out the relevant professional activity. The documentation of the business relation must include not only the company name but also the registered office, the country where the company is registered, the date of formation and, if available, the place and date of the entry in the public register.

Although the ordinance basically assumes that the identification is done during a personal meeting with the customer, there is also the option of opening a business relation by correspondence. In that case, documents certified by a notary public must be sent. In addition, the personal identification must be carried out later during the first personal meeting with the customer.

Identification of the Beneficial Owner

If the beneficial owner of the endowed assets is not the same as the contract partner, the latter must make a statement about the beneficial owner; that statement must include the same information as the documentation of the contract partner. The only exceptions from that obligation are companies quoted at a stock exchange and business relations between banks that are subject to Directive 91/308/EEC or an equivalent regulation.

Repetition of Identification

The identification process must be repeated if doubts arise about the identity of the contract partner or the beneficial owner in the course of business relations. If there is a strong suspicion that a contract partner has given false information about himself or about the beneficial owner, business relations may be discontinued if this is possible without putting assets at risk. The withdrawal of the assets must be sufficiently documented. If, however, the correct information is provided without delay, business relations may be continued.

Defence against money laundering

If the suspicion arises during a financial transaction that there might be a connection with money laundering,

Despite stricter rules for due diligence, the Liechtenstein laws on banking secrecy have remained untouched.

with a prior offence of money laundering (not including offences concerning taxation) or organised crime, the circumstances must be clarified in detail.

There must be an investigation in particular if the transaction is not in accordance with the economic background or the usual business activities of the contract partner or the beneficial owner or if the transaction does not seem plausible, retraceable or useful in view of the information about the customer. In these cases, all information must be obtained that is suitable to support or dismiss the suspicion. The clarification must be documented.

If the suspicion remains, a report must be filed with the Liechtenstein Financial Intelligence Unit; the assets concerned must be blocked for a period of ten days without informing the contract partner. The Public Prosecutor or the Liechtenstein Financial Intelligence Unit may extend that term by another 20 days.

Clear Rules on Documentation

The persons and companies subject to the DDA are obliged to carry out all clarification measures in writing and to prepare a note about every customer that includes information on the contract partner, the beneficial owner, any authorised persons, the economic background and on the origin of the endowed assets. Also, it is necessary to document the profession and the business activities of the beneficial owner as well as the purpose of use of the assets.

Every company must issue internal guidelines about the contents, the keeping and the preservation of diligence records as well as about the actions the staff will have to take in the case of dubious transactions.

Furthermore, every company must name a contact person to the Department for Financial Services.

Also, a diligence officer must be appointed and charged with the internal organisation, the preparation and implementation of guidelines, the training and further education of staff and the providing of advice in all matters of professional diligence duties.

Finally, a control officer must be appointed, whose duties are to monitor compliance with the law at all times and to prepare regular reports to the management on the examinations carried out by him.

Further controls are carried out by the Department for Financial Services. The information obtained may only be used for fighting money laundering and organised crime.

Legal Obligation to Further Education

It is clear that all these new obligations cannot be met without adequate training for the persons responsible as well as their employees. Therefore, providing evidence of further education activities is part of a compulsory internal annual report required by the law.

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The new rules on professional diligence duties in Liechtenstein set high international standards.

Furthermore, the annual report provides information on the extent of financial transactions as well as on the activities of the diligence officer and the control officer.

Severe Punishment for Infringements

Infringements of the DDA lead to severe punishment. Persons who do not meet their obligations and e.g. fail to carry out identification or documentation correctly may be punished by the Princely Court of Justice by up to six months imprisonment or a fine of up to 360 daily rates.

In addition, the Government may impose administrative fines of up to CHF 100,000 if information is refused, incorrect information is given, major facts are concealed or instructions of the Department for Financial Services are not complied with.

Further sanctions such as the cancellation of the licence to operate are expressly reserved.

New Rules Set High International Standards

Public figures from politics and business have been emphasising that Liechtenstein is not interested in criminal money and will do everything to keep it away from the financial location of Liechtenstein.

The DDA of 1996 provided Liechtenstein with rules that could well stand international comparison. These rules have become even stricter in the new DDA, so that they are now considered to be exemplary on an international level.

Summary of Services

- International Tax Planning;
- Estate Planning, Portfolio Counselling and Management, Structuring and Administration of Asset-Protection Trusts and Vehicles;
- Incorporation, Domiciling and Administration of Liechtenstein and Foreign Companies;
- Counselling in Business, Commercial, Fiscal and Financial Matters, International Business Transactions;
- Intellectual Property, Licensing and Franchising;
- Bookkeeping and Auditing;
- Civil, Criminal and Administrative Litigation;
- Legal Opinions.

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F.L.BULLETIN

Liechtenstein's Prime Minister, Otmar Hasler, has clearly stated his support for banking secrecy. During a business convention in Bad Ragaz, Switzerland, he stated: «The banking secrecy remains untouched.» At the same time, he criticised the efforts towards international tax harmonisation abroad and emphasised the importance of continuing the competition among taxation systems.

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In October 2001, the Liechtenstein Government established a new staff body for implementing the Due Diligence Act. Daniel Thelesklaf, graduated lawyer and compliance expert from Switzerland, was appointed head of that body. The new staff body provides advice to the Government in particular in matters concerning compliance with the Due Diligence Act. In addition it also represents the interests of Liechtenstein towards international organisations such as the FATF, the Financial Action Task Force of the Organisation for Economic Co-operation and Development, for ensuring the quality of the conditions under which financial services are provided.