

## Liechtenstein Improves Investor Protection

### The Implementation of the EU «Markets in Financial Instruments Directive» (MiFID) Provides more Quality and Transparency

On 1st November 2007 new legislation on the provision of financial services came into force in the Principality of Liechtenstein. Liechtenstein thereby implemented the new Markets and Financial Instruments Directive into State Law, fulfilling its obligation as a member of the European Economic Area (EEA). The Liechtenstein Government, in doing so, placed utmost priority on the interests of the Financial Market. The result is an improvement of quality and transparency which will, above all, strengthen the trust of investors in the Liechtenstein Financial Market Place.

#### Common European Financial Market Place

The Markets in Financial Instruments Directive – abbreviated MiFID – issued by the EU on 21st April 2004, is part of a 42-module packet to strengthen the European Financial Market Place.

The MiFID also recognised the developments over the last few years: the financial markets as well as the financial instruments offered by finance institutions were and are subject to extensive change. The established markets offer an ever increasing variety of products. In addition to these established markets, new markets have developed e.g. the electronic trading platform. The number of providers and investors has also increased dramatically over the same period. With this in mind

ency in investment counselling and management of assets as well as to provide better protection for investors.

#### Key Aspects of the New Directive

The MiFID Directive can be summarised through the following major points:

- The investment counsellor of a bank or asset manager must create a clear profile of each client including their personal status i.e. education, profession, assets, income, knowledge of securities as well as investment goals and risk levels.

MiFID wants to provide a unified legal framework for the provision of securities services and investment transactions. The goal is to strengthen competition among providers, to increase transpar-

#### MiFID and Liechtenstein

The implementation of the EU «Markets in Financial Instruments Directive» (MiFID) was conducted in two stages:

- On 1st January 2006 the Law on Asset Management and the corresponding rules came into force. This law created an internationally recognised financial intermediary whose main activity is investment counselling and asset management. Companies can acquire an EU passport and, without further authorisation, conduct business throughout the European Economic Community (EEC).
- In the second stage, on 20th September 2007, the government ratified changes to the Bank Laws and set out comprehensive rules on securities services. This involved, above all, the extension of transparency and the rules on documentation, rules on good conduct, organisational challenges, transaction systems and the responsibility of supervisory bodies.

## Information in Client Profiles is, of course, Protected by Professional and Bank Secrecy Rules.

This profile must be in writing and signed by both parties. The profile serves, in the first instance, as protection for the investor and ensures that only financial instruments are envisaged whose function the investor understands.

- Investors will be allocated into

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categories in accordance with their knowledge of securities transactions. The MiFID Directive differentiates between three categories of clients (see Box Page 3)

- The investment counsellor must clearly inform the client about chosen financial instruments and the associated risks. If the client is unable to evaluate the actual risk, then the transaction may not be conducted.

- The financial intermediary is obliged to execute business on behalf of the client on the best possible conditions (Principle of «Best Execution») and provide the client with appropriate documentation. In addition, he must inform the client of any commission on the transaction or any other fees received.

- The client is to be informed about the performance of the investment at pre-agreed regular intervals. Whereby the performance of the investment shall be coupled to a benchmark which has been jointly decided upon with the client. Benchmarks may be e.g. a stocks and shares index.

### Implications of MiFID-Directive for Investors

Banks and, in addition, investment companies are obliged to implement the MiFID Directive. In order for them to do this, the investor

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must provide detailed information about their personal status. On the basis of these details the client can be objectively placed in the correct category and a corresponding investment strategy can be selected. This information is protected by the professional and bank secrecy rules.

Once the client has been allocated, he must be informed. A client may demand in writing to be reallocated, however the reclassification from a Retail Client to a Professional Client is tied to certain conditions, which are defined in the Liechtenstein Bank Law Rules and of which at least two must be fulfilled:

- The client must have conducted, over a period of two consecutive years, on average 10 sizeable transactions per quarter.
- The total assets of the client in liquid assets and financial instruments must have a corresponding value of 500'000 Euros.
- The client must have held, over a period of at least one year, a posi-

## Thanks to the MiFID-Directive, Investors Profit from Higher Transparency, Improved Quality of Products and Services.

tion in the financial sector which pre-conditions knowledge on the intended transactions and services.

Reallocation to a new category also entails a change in the legally prescribed protection level.

### Effects on Banks and Asset Managers

The MiFID-Directive entails an increased effort in client communication for banks and investment companies as all clients' profiles must be adjusted to meet the new regulations. This not only involves informing the client of the new regulations but also gathering all relevant information in order to allocate the client into their respective category. This will normally be done in writing but can also be conducted, on the client's request, e.g. in a personal meeting. If a request for a personal meeting is made, the profile will be updated on their next visit to Liechtenstein.

### Preventing Conflicts of Interest

In addition to preparing a client profile, in future, financial intermediaries must observe more closely that no conflict of interest occurs which could be of a disadvantage to the client. In order to avoid this, the rules of «due care and attention» will be closely scrutinised and organisational meas-

### Three Categories of Clients

Under the MiFID-Directive banks and asset managers are to allocate their clients into three of the following client categories with corresponding levels of protection:

- **Retail Client**  
This client category which can also be called small investor or private investor is applied when the client is considered to be neither a Professional Client nor a Suitable Counterparty. Individuals as well as small and middle-sized companies may fall into this category. This category offers the client the highest level of legal protection envisaged.
- **Professional Client**  
Designated Professional Clients must clearly fulfil pre-defined conditions laid out in the Bank Laws. Professional Clients receive a lower level of protection than Retail Clients as they are deemed to have sufficient experience, understanding and factual knowledge to take investment decisions and to evaluate the risks involved.
- **Suitable Counterparty**  
Suitable Counterparty applies only to legal entities, reporting to a financial market authority, large enterprises as well as governments, central banks, international i.e. supranational organisations. These clients do not receive any services with regard to investment counselling and asset management. They may on request, however, be treated as Professional Clients.

ures will be taken to identify and communicate, more quickly, possible conflicts. In addition, employees are subject to high standards of ethics and clear rules on their own business interests and the acceptance of presents. Continuing education guarantees professionalism.

### Focused on Europe

Transparent reporting to the client, clear allocation of clients to disig-

nated investment strategies and the obligation to the Principle of «Best Execution» marks, without doubt, a milestone in the development of client relationships in the Liechtenstein Financial Sector. Liechtenstein banks and asset managers are, because of the country's membership in the EEA, active throughout Europe. The implementation of the EU Financial Directive was undisputed

## The MiFID-Directive Sets New Levels in Client Relationship and Investor Protection.

even though this represents a major challenge to the sector.

Generally it can be expected that financial service providers will optimise their products and offer their clients an even better service. As of 1st November 2007 the rules of the game are clear and apply to everyone.

Liechtenstein's Financial Sector is convinced that the client will be the final winner because they benefit from more transparency and an improved quality of financial products and services.

### F.L.BULLETIN

*In 2006, the Financial Market Place Liechtenstein once again recorded strong growth. Managed assets reached approx. 219.4 bn Swiss Francs – an increase of 20.2% when compared to the previous year. Since 1st January 2005 growth has increased by as much as 53.3%. This development mirrors the trust of investors in the Liechtenstein Financial Market.*

\*

*The independent Financial Market Authority (FMA) contributed this boom to the excellent market conditions and the*

*creation of new financial products. In 2006, new laws were introduced on asset management and provision of insurance.*

\*

*The majority, i.e. 80% of managed assets (173.4 bn Swiss Francs), lies in the hands of 15 active Liechtenstein Banks. Whereby nearly 149 bn Swiss Francs are entrusted to the Big Three: LGT Bank in Liechtenstein (62.4), Liechtensteinische Landesbank (51.8) and VP Bank (34.8).*

\*

*In an extensive interview with «Schweizer Bank» magazine Hereditary Prince Alois von Liechtenstein discussed the success factors of the Liechtenstein Financial Market: «Political stability, a liberal conservative political outlook, the excellent framework with regards to regulations and infrastructure as well as well-educated personnel are positive contributory factors». When asked about the pending reform in the financial sector he believes: «A State must, as a company, stay innovative and must strive towards continuous optimisation in order to withstand international competition. Currently we are developing, together with external specialists, a strategy for the Financial Market Place within the framework of a comprehensive economic location. We are identifying current deficits. The shortage of qualified personnel is a central point of discussion. The foundations, as such, will be laid down this year.»*

### Summary of Services

- International financial, tax and business consulting
- Incorporation, domiciling and administration of domestic and foreign companies
- Consulting in international trade and financial transactions
- Legal representation in civil, administrative and criminal matters
- Investment consulting and investment management
- Trust administration
- Family office services
- Bookkeeping and auditing
- Intellectual property, licensing and franchising
- Legal opinions

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