32. Trust service providers are obligated to obtain from the contracting party a written statement identifying the beneficial owner. Although the law does not explicitly require trust service providers to verify beneficial ownership information, in practice it appears that verification is obtained in most cases. With few exceptions, the obligation by trust service providers to obtain beneficial ownership information covers only persons who hold economic rights to a specific legal entity/arrangement but does not cover curators, protectors, and other designated third parties controlling a structure.

33. For commercially-active companies, no formal measures are in place to ensure that beneficial ownership information is obtained, verified, and maintained. In practice, it appears that whenever a commercially-active company utilizes the services of a trustee or conducts a financial transaction, beneficial ownership information is obtained.

34. Nominee directors, nominee shareholders, protectors/collators and letter of wishes are permitted under Liechtenstein law and are frequently used in relation to trusts and Stiftungen.

35. Liechtenstein should conduct a full review of its laws concerning non-profit organizations (NPOs) to assess their adequacy for combating the financing of terrorism and conduct fuller outreach on CFT issues to its NPO sector. In general, to the extent that any Liechtenstein NPOs do raise or distribute funds, they are registered with and their financial transactions monitored by the Liechtenstein tax authorities.

National and International Cooperation

36. National cooperation between the authorities on AML/CFT matters was found to be effective, and there is evidence that Liechtenstein's ability and willingness to cooperate internationally and share available information has improved strongly. However, the legal basis for sharing of information with foreign supervisors needs to be strengthened as it currently relies on court decisions to overrule the legislative prohibitions. These court decisions related to the Banking Act and it is open to question as to whether the precedents established could extend also to insurance, investment undertakings, and certain DNFBPs (trustees, lawyers, and auditors). Moreover, the law provides customers with a right of appeal to the Superior Court, which could result in delays in the provision of information.

37. The FIU is active in international cooperation and may exchange information and otherwise cooperate with any counterpart financial intelligence unit abroad. In so doing, the FIU can exercise all the powers vested in it under the domestic law.

38. The legal framework of the mutual legal assistance (MLA) and extradition system is basically sound. The authorities positively cooperate to bring the proceedings to a satisfactory result. The significant scope for appeal is a delaying factor that is effectively used in some cases, however. The fiscal exception is also extensively interpreted in this domain: serious and organized fraud by way of fiscal means still profit from the amnesty

Liechtenstein provides for fiscal offenses. At the time of the onsite visit, an amendment was pending to partially remedy this situation.

1 GENERAL

1.1 General Information on Liechtenstein

39. The principality of Liechtenstein is a monarchy with a democratic and parliamentary system. According to Article 2 of the Constitution, the power of the State is inherent in and issues from the Reigning Prince and the people. The head of state is HSH Prince Hans-Adam II. Since August 2004, Hereditary Prince Alois has exercised the sovereign powers as the representative of Prince Hans-Adam II. Government consists of a five-member cabinet nominated by Parliament and appointed by the reigning Prince for four years. The Parliament is comprised of 25 elected members, who serve for four years. To be valid, each new law enacted by Parliament requires the consent of the Prince. The people retain comprehensive direct democratic rights (optional referendum, legislative initiative). The enactment of ordinances, where provided for under a law, does not require the consent of the Parliament or the Prince as they are issued under the authority of the Government. Liechtenstein has a resident population of about 35,000, and occupies a 160 square km area between Austria and Switzerland. It has a customs union and monetary union with Switzerland. Real GDP in 2004 was CHF4.3 billion, up 3.5 percent from 2003. Financial services represent 30 percent of GDP, while the industrial sector comprises 40 percent of GDP. In 2005, about 30,000 people were employed in Liechtenstein, of which approximately 14,000 were inward commuters from Austria and Switzerland. Employment in the financial services industry is responsible for more than 14 percent of all jobs.

40. Non-resident business constitutes more than 90 percent of the private banking activities conducted in Liechtenstein.

41. Domestic financial institutions and legal entities are exposed to the risk of being used to launder proceeds of foreign corruption. Liechtenstein endorsed the UN Convention Against Corruption on December 10, 2003, and a working group for the prevention of corruption has been established in order to organize preventive measures and prepare the legal amendments required to implement the UN Convention. Liechtenstein provides substantial financial and technical support to the International Center of Asset Recovery (ICA) in Basel. The country has not signed the Council of Europe's Criminal and Civil Law Conventions on Corruption and, therefore, has not been subject to the mutual evaluation process conducted by the Group of States against Corruption (GRECO). Liechtenstein, which is not an OECD member country, is not party to the 1999 OECD Convention on Combating Bribery. Nonetheless, in the context of their AML/CFT investigations, authorities in Liechtenstein have played an active role in uncovering a number of significant cases, including the Siemens corruption scandal.

42. The FATF Recommendations define the basis on which AML/CFT measures are to be set out in law, regulation, or other enforceable means. In setting the requirements in Liechtenstein for customer due diligence (CDD), the Due Diligence Act (DDA), as primary legislation, and the related Due Diligence Ordinance (DDO), which as a government ordinance has the status of secondary legislation, qualify as 'law and regulation'. Among the guidance issued by the financial supervisory agency, the Financial Market Authority (FMA), Guideline 2005/1 defines binding risk criteria in direct implementation of Article 13.2 DDA. On that basis, the assessors considered those requirements to qualify as "other enforceable means". Other guidance issued by the FMA, of less relevance to the implementation of the FATF Recommendations, does not enjoy such direct legislative support and has not been accepted as other enforceable means for the purposes of this assessment.

1.2 General Situation of Money Laundering and Financing of Terrorism

43. Liechtenstein's crime rate is low, with a total of 1,189 recorded crimes in 2006, of which 616 were economic crimes. About 36 percent of these cases were solved. The major criminal activities identified by the authorities as predicate offenses for money laundering are economic offenses, in particular fraud, criminal breach of trust, asset misappropriation, embezzlement and fraudulent bankruptcy, as well as corruption and bribery.

44. From the perspective of the law enforcement authorities, the abuse of corporate vehicles and financial services in Liechtenstein represents the main risk in the money laundering area, and they indicated that obtaining information on the real beneficial owner remains a recurring challenge. While the general position of the authorities is that it has proven possible in all cases to identify the beneficial owner, there were some indications that full and accurate information on beneficial owners is not always provided in the first instance and some of the authorities questioned the capability of some financial intermediaries to exercise real control and monitoring over the financial transactions. In addition to important business areas such as private banking and trustee services, the growth of business with similar risk characteristics in the domain of insurance and investment[1] is a recent phenomenon that also needs to be carefully monitored. No particular vulnerability to being used for terrorist financing has been identified in Liechtenstein.

45. Reflecting the importance of nonresident business to Liechtenstein, the law enforcement response to potential cases of money laundering is still to a significant extent reactive to relevant information from sources outside Liechtenstein. However, there have been important and high-profile exceptions to this approach and a more proactive domestic approach has become evident since the creation of the FIU. However, taking into account the importance and relative size of the Liechtenstein financial industry, the number of suspicious

[1] For example, Swiss insurance companies and asset managers find it attractive to transfer business to Liechtenstein to take advantage of the package of measures recently developed by the authorities, including the new Asset Management Act and arrangements to facilitate the marketing of Liechtenstein insurance-based investment products tailored to the legal requirements of a range of countries, including EEA member states.

transactions reported to the Liechtenstein FIU is still modest. The overall dependence of the AML system on information from and action by other jurisdictions remains quite high, though this is partly a reflection of Liechtenstein's position as a physically small but strategically important financial center. The absence of domestic ML convictions and the systematic transfer of cases for prosecution abroad is a clear reflection of this situation, although the authorities emphasized that this approach is also aimed at enhancing the effectiveness of the prosecution process.

1.3 Overview of the Financial Sector

Financial Sector

46. Liberal tax laws for domiciled and holding companies, originally passed in the 1920s, gave rise to an important fiduciary activity in Liechtenstein that has succeeded in attracting large flows of foreign funds. Administered assets, which were initially largely invested with foreign banks, are now mainly managed by domestic financial institutions, which offer private banking and asset management services to non-resident investors and operate with a high level of banking secrecy. As noted, the financial sector generates 30 percent of Liechtenstein's GDP. It employs more than 14 percent of the workforce, with business equally shared between financial and fiduciary institutions.

47. An important marketing advantage for the financial services business arises from Liechtenstein's integration into two economic zones: the Swiss financial system, through a custom union and a currency agreement, and the European Economic Area that allows free movement of goods, persons, services, and capital among its member countries.[2] Popular business models involve Swiss banks and insurance companies selling financial products from Liechtenstein to existing clients across the EU, while EU financial institutions and financial intermediaries make use of the provision for cross-border services to provide, for example, Liechtenstein private banking and trust and company services and products to their client base.

Categories of Financial Institutions (number):

	2004	2005	2006
Banks & Postal Service	17	17	17[3]
Asset Managers			48

[2] Comprising Member States of the European Union (EU) together with Iceland, Norway, and Liechtenstein.

[3] One bank is in liquidation.

Investment Undertakings[4]	349	405	345
Insurance Undertakings and Intermediaries	28	32	38[5]
Pension Funds	40	41	39
Supervised by the FMA	**434**	**495**	**486**

Cross-border provision of services (number of financial institutions):[6]

	2004	2005	2006
EEA Banks & Investment Firms	725	826	949
EEA Management Companies and Investment Undertakings			104
Swiss and EEA Insurance Undertakings & Intermediaries	228	249	267

48. Of the 16 banks licensed and operating in Liechtenstein at the time of the assessment, ten have been established within the previous ten years; four of them are subsidiaries of Austrian banks and three of Swiss banks. One of the banks is now in liquidation. There are 17 life insurance and five reinsurance firms, although the latter do not engage in commercial reinsurance business, as such, but consist of forms of captive insurance structures.

49. The total of assets under management by Liechtenstein financial institutions was CHF219 billion at the end of 2006, compared to CHF143 billion in 2004 (+54 percent). Financial activities are dominated by the banking sector with 15 institutions managing 82 percent of these assets and, notably, by the three largest Liechtenstein banks which have a 66 percent market share in aggregate. Other financial institutions—investment undertakings, asset managers, and insurance companies—are developing strongly but from a very low base. A recent trend is for the major banks to supplement their offshore activities from

[4] Since December 1, 2006, the Investment Undertakings category was divided into two categories, separating domestic from foreign investment undertakings.that are authorized to operate in Liechtenstein by virtue of cross-border provision of services under the Single European Market which applies to EU and EEA member states.

[5] Including 17 life insurance companies.

[6] Foreign financial institutions licensed in their home state and authorized to operate in Liechtenstein by virtue of cross-border provision of services under the Single European Market which applies to EU and EEA member states.

Liechtenstein by setting up onshore operations through branches and subsidiaries in Switzerland, Germany, and Austria, as well as in the Middle East and Asia.

Assets under management for each category of financial institution (amount in billions of CHF, on a consolidated basis):

	2004	2005	2006
Banks	119.4	148.7	173.4
Investment Undertakings	15.6	20.6	26.6
Insurance Undertakings	5.1	9.4	16.2
Pension Funds	2.8	3.1	3.2
Total	**142.90**	**181.80**	**219.4**

50. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of "financial institutions" in the FATF Recommendations.

FINANCIAL ACTIVITY BY TYPE OF FINANCIAL INSTITUTION		
Type of financial activity (See the Glossary of the 40 Recommendations)	**Type of financial institution that performs this activity**	**AML/CFT regulator & supervisor**
1. Acceptance of deposits and other repayable funds from the public (including private banking)	Banks Postal Service AG, as exclusive agent of Postfinance (Swiss Post)	FMA
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Banks	FMA
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	Banks	FMA
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Banks Postal Service AG, including as exclusive agent for Western Union	FMA
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveler's cheques, money orders and bankers' drafts, electronic money)	Banks Electronic money institutions	FMA
6. Financial guarantees and commitments	Banks	FMA
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	Banks Investment undertakings	FMA
8. Participation in securities issues and the provision of financial services related to such issues	Banks Investment undertakings	FMA

9. Individual and collective portfolio management	Banks	FMA
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks Investment undertakings Asset Management Companies	FMA
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Banks Investment undertakings Asset Management Companies	FMA
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	Life insurance companies Occupational pension funds Life insurance intermediaries	FMA
13. Money and currency changing	Banks Foreign exchange offices	FMA

Financial Supervision

51. The Law on the Financial Market Authority (FMA) entered into force on January 1, 2005. The FMA was formed by consolidating three supervisory bodies: the Financial Services Authority, the Insurance Supervisory Authority, and the Due Diligence Unit, which previously dealt with AML/CFT issues. The FMA is an integrated financial supervisory authority for all financial markets and institutions and providers of financial services. Its objectives are to safeguard the stability of the Liechtenstein financial center, the protection of clients, the prevention of abuses, and compliance with international standards.

52. The FMA operates as an autonomous institution under public law. It is exclusively accountable to the Parliament which appoints, and may dismiss, its board of five members. It is financed by the state budget and by fees levied upon supervised entities. The board supervises the implementation of the strategy and designates a general management team of four persons. The FMA has benefited from both a significant increase of the number of staff and the recruitment of more staff with professional experience in finance and financial services. It has a workforce of 29 highly-qualified persons with a background in law (50 percent) and in business administration (25 percent).

53. Prudential and due diligence regulations issued by the FMA are based largely on EU Directives, as required by Liechtenstein's EEA membership. The FMA may issue orders in administrative proceedings, which are subject to appeal in a complaint commission at a first instance and secondly to the administrative court.

AML law

54. A new law on professional due diligence in the professional conduct of financial transactions entered in force on February 1, 2005 and was designed to incorporate the provisions of the second EU Money Laundering Directive. AML/CFT legal requirements are expanded and specified in the Government's Due Diligence Ordinance (DDO) dated January 11, 2005.

55. The DDA defines due diligence requirements that apply to "the professional conduct of financial transactions" in order to combat money laundering, organized crime, and the financing of terrorism. The DDA has a broad coverage which combines a personal scope and a substantive scope of application: on the one hand, it lists categories of legal and natural persons subject to due diligence (financial institutions and DNFBPs) and, in addition, it defines categories of financial transactions and delineates transactions that are excluded from the scope of the DDA. Both the personal and substantive scope tests need to be met for a person to be subject to the requirements of the DDA.

56. The DDA spells out due diligence related to the identification of the contracting party and of the beneficial owner, the need to monitor transactions, the requirement to create and maintain customer profiles, and the obligation to report, document, and control transactions and operations. It also specifies the FMA's power to supervise and inspect all financial institutions and activities subject to due diligence.

57. Steps towards the adoption in Liechtenstein of measures to transpose the EU Third Money Laundering Directive are underway and the assessors understand that the necessary amendments to the DDA and DDO will be enacted in 2008.

58. The general approach of the FMA to its ongoing financial supervision is based on mandating external auditors to conduct ordinary or extraordinary due diligence (AML/CFT) on-site examinations on its behalf, the basis and scope of which are determined by the FMA. It has the power to either participate in these examinations, or choose to conduct its own on-site examinations, but for the most part relies on the findings of the external auditors. To be accepted by the FMA to conduct due diligence on-site examinations, external auditors must demonstrate their expertise in and experience of AML/CFT requirements and follow precise inspection guidelines provided by the FMA. The DDA defines penal and administrative provisions that sanction infringements of the due diligence requirements, although these are not typically employed in practice by the FMA at this time, with reliance being placed instead on the Prosecutor's Office in pursuing criminal sanctions.

1.4 Overview of the DNFBP Sector

59. The DNFBP sector in Liechtenstein is significant, particularly as regards trustees and lawyers who provide trust and company services. However, due to the degree of product integration with the financial institutions and the provision of complementary products to what could be termed the private banking market, the main categories of DNFBPs are viewed as a core segment of the financial services business. DNFBPs in Liechtenstein are, for the most part, subject to the requirements of the DDA and supervised by the FMA.

60. Liechtenstein currently has no casinos, in accordance with the terms of its 1922 Customs Union with Switzerland. Now that Switzerland has changed its law to permit casino gambling, Liechtenstein is considering whether to follow suit. There are 18 real estate agents in Liechtenstein and 37 traders in precious metals and stones. There are 27 audit firms

(including sole practitioners). Liechtenstein has 105 lawyers and two "legal agents"—the last active members of a pre-1958 professional category. According to the 1992 Law on Trustees (Article 1.3), lawyers can obtain a limited trustee license by special examination with one year of practical work. The law also allows lawyers who were authorized to form companies before that date to continue to do so (Article 54.1 and 2).

61. There are 343 trustees (including both sole practitioners and companies), an additional 22 firms or individuals that hold both auditor and trustee licenses, and 28 individuals who hold both a law and a trustee license. There are an additional 107 persons who can act as company directors for Liechtenstein registered firms (under the terms of Article 180a, PGR), but who do not have the right to form companies.

1.5 Overview of commercial laws and mechanisms governing legal persons and arrangements

62. The commercial laws and mechanisms governing legal persons and arrangements are analyzed in this report in considerable detail, due to their significance in relation to the financial services sector in Liechtenstein and the potential for their misuse for purposes of money laundering or terrorist financing.

63. Liechtenstein's laws governing legal persons and arrangements are the Personen und Gesellschaftsrecht (PGR) and the Gesetz ueber das Treuunternehmen (TrUG). Most of the provisions of the PGR are not mandatory and may be changed through the founding articles of association or founding statutes. Overall, the PGR is a highly-liberal law with only few set boundaries. It offers a wide range of company forms, each of which may be custom tailored to the parties' needs. Whereas the TrUG is a rather well-structured law, the PGR extensively uses cross references between the various sections of the law. As a result, it is difficult to identify the applicable provisions for each company form. Many of the provisions in the law seem to have no practical relevance and practitioners as well as the authorities agreed that the PGR would benefit from an extensive revision.

64. Most company forms of the PGR may obtain full legal capacity upon registration with the Oeffentlichkeitsregister (public registry). The public registry consists of a single register and is maintained and administered by the Grundbuchs- und Oeffentlichkeitsregisteramt (GBOERA). Although some older provisions in the PGR still refer to different registers, such as Treuhandregister, Anstaltsregister, Firmenregister, more recent provisions regulating the public registry (Articles 944–990 PGR and the Ordinance on the Public Registry (OeRegV)) provide for only one centralized register. In addition to the public registry, the GBOERA also maintains and administers information and documents pertaining to deposited Stiftungen and deposited trusts.

65. Registration typically requires the disclosure of certain information as well as constitutive documents, such as founding deeds or founding statutes. Registration must take place at the location of the legal person's headquarters. Branch offices need to be registered

at their respective locations and the entry refers to the registration of the headquarters. Registration requirements for branch offices also apply to those of foreign companies. All registered information is published through an official gazette ("Liechtensteiner Vaterland" and "Liechtensteiner Volksblatt") and on the homepage of the registry. However, for some forms of legal entity, documents submitted in the course of the registration may only be accessed upon proof of a legitimate interest of the requesting party.

66. Corporations and establishments governed by public law as well as non-commercial associations, religious foundations, family foundations and any entities designated by law are exempted from the registration obligation and obtain legal personality through an act of formation. These legal persons are, however, required to deposit a copy of the constitutive documents at the GBOERA. Trusts set up for a duration of more than 12 months have to be either registered or deposited if at least one trustee is domiciled in Liechtenstein, whereby the choice is at the settlor's discretion. Deposited documents may only be accessed through a court order; however, law enforcement authorities, the FIU, and the FMA may be provided with the name and address of the representative of a deposited legal entity or arrangement.

67. The registry is currently being transferred to electronic archives. The process is expected to be finalized by the Summer of 2009. A limited amount of information is already available online.

68. As of March 10, 2007, 29,156 companies were registered and another 42,651 foundations and trust deeds deposited with the public registry. Whereas since December 2004 the number of registered entities decreased by 2.4 percent, deposited deeds increased by 8.5 percent. Of the 29,156 registered companies, only 10 percent are estimated to fall under the category of "commercially active" with approximately 90 percent "not commercially active".

69. Legal Entities (forms and number)

	Dec 31, 2004	**Dec. 12, 2005**	**Dec. 12, 2006**	**March 10, 2007**
AG and KAG (Company limited by Share; Limited Partnership with a Share Capital)	7,861	7,623	7,482	7,460
GmbH (Limited Liability Company)	56	59	64	67
Societas Europaea	0	0	1	1
Anstalt (Establishment)	15,528	15,148	14,858	14,842
Registered Stiftungen (Foundation)	1,495	1,494	1,532	1,541
Registered trust deed and trust enterprise	1,746	1,813	1,992	2,005
Registered Association (Verein)	129	145	153	153
Domestic Subsidiary	8	9	12	12
Foreign Subsidiary	61	66	74	76

Sole Trader	294	345	383	392
Other Legal entities	2,689	2,642	2,631	2,607
REGISTERED Total	**29,867**	**29,344**	**29,182**	**29,156**
DEPOSITED trusts and foundations	**39,382**	**40,904**	**42,426**	**42,651**

Legal Persons

70. Liechtenstein's corporate law provides for two main categories of legal persons:

- Koerperschaften and Korporationen (corporations)
- Anstalten and Stiftungen (establishments and foundations)

71. All forms of corporations, establishments that serve a designated purpose, and certain foundations obtain legal personality upon registration with the public registry. Corporations and establishments that are governed by public law, associations with non-commercial purpose, and foundations set up for religious or family purposes are not required to register but obtain legal personality merely through an act of formation. However, they are required to deposit a copy of the founding statute or deed with the GBOERA. In addition to the two categories listed above, the uneigentliche Geschaeftstreuhand, a specific form of trust enterprise, as well as the Societas Europaea (SE) may obtain legal personality upon registration.

72. Legal entities, through a provision in the statute, may transfer the powers of their highest organ to another company organ or a third party. Based on Article 180a PGR, all legal persons that are not commercially active in Liechtenstein have to have at least one director who is a natural person domiciled in and a citizen of a European Economic Area (EEA) member state and licensed pursuant to the Treuhaendergesetz (TrHG Act on Trustees). Although Liechtenstein law allows both for legal and natural persons to serve as director of a legal entity, based on Article 180a PGR a corporate director may never be the sole director of a legal entity. At least one director has to be a natural person. Neither the person in whom control powers are vested nor directors are required to hold an interest in the company to which he/she provides services. Bearer shares may be issued by a large number of legal entities, i.e., the AG (Article 323 PGR), the Genossenschaft (Article 447 PGR), the Versicherungsverein auf Gegenseitigkeit und Hilfskassen (Article 508 PGR), the Stiftung (Article 567.4. PGR in connection with Article 928.1. and 3. PGR), trusts (Article 928 PGR) as well as trust enterprises (Article 23 TrUG in connection with Article 928 PGR) may issue shares or securities, including securities on bearer ("Inhaberaktien", "Inhaberpapiere" or "Treuhandzertifikate"). Legal entities issuing nominal shares have an obligation to keep a register of nominal shareholders. Such an obligation does not exist regarding shares or securities issued to bearer. Whereas the law generally requires information on directors and, if applicable, founders and revisors to be registered, it is not required to provide information on persons that may hold certain control rights over a legal entity or arrangement, on

beneficiaries, and on protectors. Such information is typically contained in by-laws or reglements, which are not provided to the registry but are held by Liechtenstein fiduciaries.

73. The PGR also recognizes a number of companies without legal personality, such as the einfache Gesellschaft (simple partnership), the Kollekivgesellschaft (open partnership), the Kommanditgesellschaft (limited partnership), the stille Gesellschaft (dormant partnership), the Gelegenheitsgesellschaft (joint venture) as well as the Europaeische Wirtschaftliche Interessenvereinigung (EWI).

Koerperschaften and Korporationen (corporations)

74. Liechtenstein's legislation provides for formation of the following Koerperschaften and Korporationen:

1. **Aktiengesellschaft (Company limited by Shares)**
2. **Kommanditaktiengesellschaft (Limited Partnership with a Share Capital)**
3. **Anteilsgesellschaft (Company limited by Parts)**
4. **Gesellschaft mit beschraenkter Haftung (Limited Liability Companies)**
5. **Genossenschaft (Cooperatives)**
6. **Versicherungsvereine auf Gegenseitigkeit und Hilfskassen (Mutual Insurance Companies)**
7. **Vereine (Commercial and non-commercial Associations)**
8. **Societas Europaea (SE)**

1. Aktiengesellschaft (Company limited by Shares)

75. Aktiengesellschaften (AG) are corporate entities with a pre-determined capital stock that is divided into shares. At least two founders, who may be natural or legal persons, are required to set up an AG, none of which has to be a citizen of or domiciled in Liechtenstein. After the AG has been founded, all shares may be transferred to one shareholder. The AG's founding statute has to provide the company's name, domicile, purpose, and information on its founders. It further has to include information on the structure and powers of its organs and specify the amount of its stock capital and the par value for every category of shares it will issue. In addition to a notarized copy of the statute, the registry has to receive the names, domiciles, and nationalities of all revisors and natural and corporate directors of the AG. A confirmation of payment of the legal minimum of the capital stock has to be provided. According to Article 953 Abs 4 PGR, all registered information in relation to an AG, including statutes and other documentation, is accessible by the public. The AG's highest organ is the general assembly of shareholders. The assembly's powers, however, may be partially or fully transferred to another organ consisting of shareholders or non-shareholders. AGs are controlled by a director or a board of directors that is elected by the general assembly. It is mandatory that the general assembly appoints a Revisionsstelle. The minimum capital stock of an AG is CHF50,000, which has to be paid in full at the time of registration. Only the capital stock is liable for the AG's obligations, shareholders are not personally

liable. The AG may issue nominal as well as bearer shares, with no limitation on the free transferability of bearer shares.

2. Kommanditaktiengesellschaft (Limited Partnership with a Share Capital)

76. Kommanditaktiengesellschaften (KAG) are corporate entities with a pre-determined capital stock, which is divided into shares. At least one or more shareholders of the KAG is personally liable for the company's obligations. At least two founders (natural or legal persons) are required to set up a KAG, none of which has to be a citizen of or domiciled in Liechtenstein. In addition to information required for AGs, the KAG's statute has to provide names, domiciles, and occupations of all liable shareholders. In addition to a notarized copy of the statute, the registry has to receive the names, domiciles, and nationalities of all revisors and natural or corporate directors of the KAG. According to Article 380 PGR, the KAG may not issue bearer shares. According to Article 953.4 PGR, all registered information in relation to a KAG, including statutes and other documents, is accessible by the public. It is mandatory for a KAG to establish an Aufsichtsrat (supervisory board), which serves as Revisionsstelle and also has permanent supervisory functions over the executive organs. The rules governing AGs are applicable to the KAG.

3. Anteilsgesellschaft (Company Limited by Parts)

77. Anteilsgesellschaften are legal entities that hold their capital assets, which do not necessarily consist of money, in the form of shares with no par value. Only the capital assets are liable for the company's obligations. Anteilsgesellschaften are set up through contract that includes the entity's name, domicile, purpose, and an exact description of the capital assets as well as the amount of shares held by each shareholder. It further has to determine the structure of its organs. The contract has to be submitted to the public registry and is accessible only upon proof of a legitimate interest or authorization. The Anteilsgesellschaft may only issue nominal shares, not bearer shares. The rules governing registered cooperatives are applicable to Anteilsgesellschaften.

4. Gesellschaft mit beschraenkter Haftung (Limited Liability Company)

78. A Gesellschaft mit beschraenkter Haftung (GmbH) is set up by one or more natural or legal persons and for any given purpose. The legal minimum capital stock for GmbH's is CHF30,000 and has to be paid in full at the time of registration. The founding statute has to include information on purpose, representation and amount of capital stock of the GmbH, on the capital share of each shareholder as well as domicile, duration and representation of the GmbH. In addition to a notarized copy of the statute, the registry has to be provided with the name and address of every partner and director. A transfer of shares is only valid if it is communicated to all shareholders and reflected in the company's list of shareholders. All registered information on a GmbH, including statutes and other documents, is accessible by the public. The GmbH may issue nominal but not bearer shares. The highest organ of the GmbH is typically the assembly of shareholders and management is vested in all founding

partners jointly. The statute may, however, transfer management functions to any third party. Partners share profits as well as losses based on their share of the capital stock.

5. Genossenschaft (Cooperative)

79. A Genossenschaft is an association of an unlimited number of members with the purpose of advancing and strengthening a joint commercial interest of its members. The founding statute has to provide information on the name, purpose and duration of the cooperative, the terms of its membership, including member contributions, as well as the liability of its shareholders. It further has to determine the type of shares it may issue and provide information on the company's organs. The public register has to be provided with a notarized copy of the statutes. A list of names and domiciles of all directors and revisors of the cooperative have to be provided as well. All registered information is accessible by the public. Documents and statutes provided to the register may be accessed upon proof of a legitimate interest in the information of authorization by the company concerned. Based on Article 447 PGR, Genossenschaften may issue certificates of participation on name or bearer, whereby bearer certificates may not be issued for a personally-liable shareholder. The highest organ of the Genossenschaft is typically the assembly of shareholders.

6. Versicherungsverein auf Gegenseitigkeit und Hilfskassen (Mutual Insurance Company)

80. A Versicherungsverein auf Gegenseitigkeit und Hilfskasse is set up to insure its shareholders based on mutuality. The founding statutes have to include information on name and domicile, insurance branch and regional field of activity of the entity, about the structure of its organs, the terms of the insurance coverage and membership, and about the insurance funds. In addition to a notarized copy of the statute, the registry needs to be provided with names and domiciles of directors and revisors as well as records documenting the establishment of the insurance fund. All registered information is accessible by the public. Documents and statutes provided to the register may be accessed upon proof of a legitimate interest in the information of authorization by the company concerned. Based on Article 508 PGR, the Versicherungsverein auf Gegenseitigkeit may issue certificates of participation or securities on name or bearer.

7. Verein (Commercial and non-commercial Association)

81. Vereine set up for political, economical, sociopolitical, religious, scientific, artistic, charitable, social, or other non-commercial purposes obtain legal personality through an act of formation and do not have to register. Such associations may, however, register if they wish to do so. Vereine that operate commercially to fulfill their purpose obtain legal personality through registration, in which case the rules on registration of Genossenschaften apply. At least three founders are necessary to set up a Verein. The founding statute has to include name and domicile, purpose and financial resources of the Verein, the terms of admission and, if applicable, the amount of membership fees, as well as information on

representation and organ structure. Vereine obliged to register have to submit a signed copy of the statute as well as name and address of directors and, if any member is personally liable, a full list of all Verein members. All registered information is accessible by the public. Documents and statutes provided to the register may be accessed upon proof of a legitimate interest in the information of authorization by the company concerned. The Verein's designated director is assumed to also have managerial and representative powers.

8. Societas Europaea (SE)

82. The Societas Europaea is regulated by Council Regulation (EEC) No. 2157/2001 of October 8, 2001 on Statute for a European Company, and the Liechtenstein Gesetz ueber das Statut der Europaeischen Gesellschaft (SE-Gesetz). The Regulation stipulates that it will permit the creation and management of companies with a European dimension, free from the obstacles arising from the disparity and the limited territorial application of national company law. The essential objective of legal rules governing SEs is to enable companies from different European Economic Area (EEA) Member States to merge or to create a holding company and enable companies and other legal persons carrying on economic activities and governed by the laws of different Member States to form joint subsidiaries. Complementary to the SE-Gesetz, the provisions on Koerperschaften in general and Aktiengesellschaften in particular are applicable to SE. Therefore, registration requirements are the same as for AG and all registered information, including statutes and other documents, is accessible by the public.

Anstalten and Stiftungen

1. Anstalten (Establishments)

83. Anstalten are autonomous funds with legal personality that serve a permanent commercial or other purpose that is not governed by public law. Although the law does not define "commercial purpose," the office of the public registrar stated that this term would entail any commercial activity whatsoever. The pure management of assets would not be deemed commercial. The Anstalt's founding statute needs to be in writing and contain the entity's explicit designation as "Anstalt." Name, purpose, and estimated amount of the Anstalt funds as well as the powers of the Anstalt's highest organ and its management need to be determined in the statute as well. In addition to a notarized copy of the statute, the registry has to be provided with information on the amount of Anstalt funds and the name and address of the Anstalt's management. Information on founders or persons in whom founder rights are vested does not have to be provided. All registered information is accessible by the public. Documents and statutes provided to the register may be accessed upon proof of a legitimate interest in the information or authorization by the company concerned.

84. An Anstalt is set up by one or more founders, who may be natural or legal persons. Typically, the founder is the Anstalt's highest organ. However, a founder may transfer his

rights or execute them through authorized third parties. Founders or persons in whom founder rights are vested may change the Anstalt's statute at any time, including the rights of the beneficiaries and the amount of the Anstalt's funds, whereby founders and directors may themselves be beneficiaries. Anstalt funds have to be at least CHF30,000. The Anstalt's beneficiaries as well as persons in whom founder rights are vested are typically determined through by-statute, which do not have to be submitted to the registry. If no beneficiaries are provided for, individuals in whom founder rights are vested are presumed to be beneficiaries of the Anstalt.

2. Stiftungen (Foundations)

85. Stiftungen are autonomous funds with legal personality that serve a designated purpose, such as religious, family, or charitable purposes. Unlike Anstalten, Stiftungen may conduct commercial business only in pursuit of its stated non-commercial purpose. Generally, Stiftungen have to be registered to obtain legal personality. Religious and family Stiftungen as well as Stiftungen with ascertained or ascertainable beneficiaries do not have to be registered but obtain legal personality merely through an act of formation. Pure investment and holding Stiftungen do not require registration. Stiftungen not required to register have to deposit their statutes with the registrar. Any Stiftung that conducts commercial business, regardless of its designated purpose, has to be registered.

86. Stiftungen are set up by one or more natural or legal persons through statute, will, or will contract. The founding deed has to provide name, address and purpose of the Stiftung, and designate and provide for procedures to make changes in a Stiftungsvorstand (board of directors). Stiftungen required to register have to provide the registry with a notarized copy of the founding deed as well as names and addresses of all members of the Stiftungsvorstand. All registered information is accessible by the public. Documents and statutes provided in the course of registration may be accessed upon proof of a legitimate interest in the information. Stiftungen exempted from the registration requirement must deposit a notarized copy of the founding deed with the GBOERA. Any information on deposited Stiftungen, including copies of the founding deed, may only be accessed through court order. However, law enforcement authorities, the FIU, and the FMA may be provided with the name and address of the representative of a deposited legal entity or arrangement. Information on founders and beneficiaries is typically contained in the by-laws, which do not have to be registered or deposited. As of March 10, 2007, 60 percent of all entries in the Liechtenstein registry related to deposited Stiftungen and trust deeds. The registry could not provide clarification on the exact amount of deposited Stiftungen versus deposited trust deeds. However, representatives of the GBOERA stated that there was a clear preference for Stiftungen over trusts. Whereas the number of entities registered in Liechtenstein decreased since 2004, the number of deposited Stiftungen and trusts increased by 8.5 percent.

87. In contrast to the founder of an Anstalt, the founder of a Stiftung loses all rights in relation to the Stiftung, unless the statute explicitly provides for certain non-transferable rights to be reserved. The founder may not, however, influence the organization or

management of the Stiftung in a continuous and exclusive way. The founder may name himself as beneficiary or designate a third party (Kollator) to determine the beneficiaries of the Stiftung. Based on Article 567 in connection with Articles 552.4. PGR and 117.2. TrUG, Stiftungen may issue Treuhandzertifikate (trust certificates) on bearer. The minimum amount of the Stiftungsfunds (assets) is CHF30,000. Generally, Stiftungen are not required to keep books of account.

Legal Arrangements

1. Trusts

88. Under Liechtenstein law a trustee is any natural or legal person to whom a trust settlor transfers movable or immovable assets or rights with the obligation to administer and hold these assets in his own name as an independent legal owner for the benefit of one or more beneficiaries and with effect towards all other persons.

89. A Liechtenstein trust may be established through trust deed, written declaration by the settlor and written acceptance of the trustee, or by will. In contrast to the Stiftung, the trust is not limited to a certain designated non-commercial purpose. The trust deed has to provide information on the settlor, the trustees, name, date and domicile of the trust, amount of the trust assets, as well as rights and obligations maintained by the settlor. The trust deed may provide for a protector to limit the trustees' discretion by requiring protector consent for any or certain actions. Trusts set up for a duration of more than 12 months have to be either registered or deposited if at least one trustee is domiciled in Liechtenstein, whereby the choice is at the settlor's discretion. Registration requires a trustee to provide information on the name, date of establishment, and duration of the trust, as well as the name and address of all trustees. A copy of the trust deed does not have to be submitted. All registered information is accessible by the public. Alternatively, a settlor may choose to deposit a notarized copy of the trust deed with the GBOERA. Deposited trust deeds may only be accessed through court order. However, law enforcement authorities, the FIU, and the FMA may be provided with the name and address of the trustee of a deposited trust.

90. The settlor may determine the terms of the trust relationship and specify conditions or a period of time after which the trust assets are reverted back to the settlor or transferred to another natural or legal person (flee clauses). The law does not limit the conditions that may trigger a transfer or revocation of trust assets. The settlor may determine the conditions according to which an appointed trustee or designated beneficiary may be removed or exchanged. Trustees have fiduciary duties, are obliged to adhere to the terms of the trust as determined in the trust deed, and are liable according to the principles of contract law. The settlor may be beneficiary of the trust. If no beneficiaries are provided for in the deed, the settlor is assumed to be the trust beneficiary. The trustee may not be the sole beneficiary. According to Article 928 PGR, trust deeds may provide for the issuance of shares in the form of "Treuhandzertifikate" (trust certificates) on name or bearer. The relationship of participants in relation to the trust enterprise, to each other, and to third parties may be

determined and regulated through reglements or by-laws, sometimes also called letters of wishes.

91. There is no required minimum of trust assets. Trusts are not required to keep books or appoint a Revisionsstelle. The trust deed determines the law of which country applies to a specific trust relationship. In cases of doubt, the law of the country in which the trustee or the majority of trustees is located applies. Trusts set up in other jurisdictions may be established in Liechtenstein. However, Liechtenstein law always applies to the relationship between the trust and third parties.

2. Trust Enterprises

92. A trust enterprise as eigentliche Geschaeftstreuhand is an enterprise without legal personality, which is set up by one or more trustees and is acting under its own name and is endowed with its own trust assets. The eigentliche Geschaeftstreuhand is liable according to the TrUG. The statute may also provide for the trust enterprise to have legal personality (uneigentliche Treuunternehmen). If not otherwise provided for in the deed, a trust enterprise is presumed to have no legal personality and the general provisions on Partnerships (Personenverbaende) apply. In contrast to the trust deed, all trust enterprises are required to register.

93. The trust enterprise's founding statute has to provide information on name, address, duration, purpose, and assets of the enterprise as well as on the number of trustees and how they are appointed. In addition to a notarized copy of the trust deed, the registry needs to be provided with the name, occupation, and address of all trustees. All registered information is accessible by the public. Documents and statutes provided to the public registry may be accessed upon proof of a legitimate interest in the information of authorization by the trust enterprise. Information on the settlors and beneficiaries is usually contained in the by-laws, which do not have to be registered. The settlor may also be beneficiary of the trust. As in the case of trust deeds, the settlor of a trust enterprise may provide for a "protector" who has the discretionary powers to remove or exchange trustees and beneficiaries. Unless otherwise provided for in the trust deed, all trustees together form the Treuhaenderrat (board of trustees) as the managing organ of the trust enterprise. According to Article 114 TrUG, trust enterprise may issue securities on name or bearer. Trust assets have to be at least CHF30,000. Trustees are generally not personally liable for obligations of the trust enterprise.

94. As of March 10, 2007, 2,005 trusts were registered in Liechtenstein. It could not be established during the assessment how many of the 2,005 were registered trust deeds and how many were trust enterprises with or without legal personality.

1.6 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

95. The authorities have identified the implementation of the know-your-customer (KYC) principle as the cornerstone on which they base their AML/CFT measures. The mandatory application of the KYC measures is based on the requirement that persons subject to due diligence (financial institutions and DNFBPs) must compile a profile for each and every business relationship, from which the economic background and the origin of the assets as well as the intended use of the assets can be seen. FIs and DNFBPs that are subject to due diligence must monitor the business relationships on the basis of each profile. If transactions or situations arise that deviate from the profile or that meet special risk criteria, then inquiries must be undertaken. If these inquiries do not lead to a satisfactory, i.e., plausible result, a report must be submitted to the financial intelligence unit (FIU). The FMA informed the assessors that the highest priority of its supervisory activity is that the profiles contain sufficient meaningful information.

96. During the course of the assessment—and, in particular, in meetings with the private sector—it was evident to the assessors that the financial institutions and DNFBPs interviewed have adopted and implemented the profile-based approach. The assessors acknowledge the substantial progress made in this regard by Liechtenstein since the last evaluation and recommends that the depth of the analysis conducted by the financial institutions and DNFBPs be increased further to fully reflect the high-risk nature of much of the financial services business conducted in or through Liechtenstein. The legal basis for the KYC requirements, while apparently functioning well in practice for many of the entities subject to due diligence, falls short in some significant respects when analyzed strictly in comparison to the detailed criteria of the assessment methodology. While the implementation of the KYC requirements is mandatory, the manner of implementation appears to allow a material degree of discretion to the entities subject to due diligence: this application of a risk-based approach is considered in more detail below.

97. In terms of strategy, other priorities identified by the authorities included:

- Treating DNFBPs for the purposes of AML/CFT requirements on the same basis as financial institutions. This is appropriate having regard to the importance in Liechtenstein of the structures permitted under company law (as described in detail above) and the key role of the trust and company service providers. Accordingly, the same rules apply to DNFBPs as to financial institutions; the inspections take place according to the same principles; and the same authority (the FMA) is responsible for monitoring. In this way, the authorities aim to ensure that the regulation and monitoring of the DNFBPs reaches the same level as the regulation and monitoring of the financial institutions.

- Targeted training of the financial market participants and sensitizing them to relevant fact patterns. The professional associations have recognized the importance of staff

training for the suppression of money laundering and terrorist financing and have jointly established the Institution for Compliance and Quality Management (ICQM);

- Taking the steps necessary to further enhance the provision of mutual legal assistance and the cooperation of the prosecution authorities, the FIU, and the FMA with their counterparts abroad, to reflect the importance of cross-border financial activity to the Liechtenstein financial center. This is evidenced, particularly since the creation of improved legal foundations and a strengthening of the authorities in 2000, by the work done by the police, the FIU, the FMA, the Office of the Public Prosecutor, and the Court of Justice with their foreign partners, both on the bilateral level and via the relevant international organizations such as Interpol, the Egmont Group, the European Judicial Network (EJN), Eurojust, and the International Association of Prosecutors (IAP), to name only a few. Over the course of the years, the authorities report that numerous direct and personal contacts have been established that have proven themselves very helpful with respect to individual cases of money laundering or terrorist financing. Information leading to the prosecution in other countries of a number of financial crime cases, including high-profile cases, has originated from or otherwise been provided by Liechtenstein and a number of foreign authorities have confirmed to the assessors (by responses to a MONEYVAL questionnaire and otherwise) that they are satisfied with the improved levels of cooperation provided in recent years by the Liechtenstein authorities;

- Adoption and implementation of the EU Third Money Laundering Directive is underway, in accordance with Liechtenstein's EEA obligations, and a number of other legal and legislative amendments are planned, including full implementation of the Vienna Convention and ratification and full implementation of the United Nations Convention against Corruption and of the Palermo Convention, as well as its first two additional Protocols.

b. The institutional framework for combating money laundering and terrorist financing

98. The range of authorities in Liechtenstein with AML/CFT roles and responsibilities is as follows:

- **Ministry of Foreign Affairs**

99. The main responsibilities of the Ministry of Foreign Affairs include the preparation and treatment of all government business relating to international agreements and treaties, bilateral and multilateral cooperation, European and international cooperation, international organizations and conferences, and diplomatic and consular relations, including where relevant to AML/CFT.

- **Ministry of Finance**

100. According to the Government Program, the goals of the Ministry of Finance include strengthening the position of the financial center and combating the abuse of the financial center for criminal purposes. In connection with the repositioning of the financial center and the fight against abuse, in the dialogue with various international organizations and jurisdictions, particular attention is paid to the fight against terrorist financing.

- **Ministry of Justice**

101. According to the Ministry Plan, the Ministry of Justice is assigned the areas of civil law, including the Law on Persons and Companies, criminal law, execution, estate, and bankruptcy law, procedural law, data protection, mutual legal assistance, extradition and transit, enforcement of sentences, and foundation law. In these areas, responsibilities include updating the existing legal order by preparing and managing legislative texts and legislative amendment processes, such as those arising from Liechtenstein's membership in the EEA. The revision of the Mutual Legal Assistance Act in 2000 has led to fewer appeals possibilities and therefore to a quicker completion of an increasing number of foreign requests for legal assistance, which has met with satisfaction abroad.

- **Counter-Terrorism Coordination Task Force**

102. The government has established a Counter-Terrorism Coordination Task Force, headed by the FIU, and including the FMA, national police, public prosecutor, legal assistance unit, judicial service, personal staff to the government (directly reporting to the prime minister), foreign ministry, and the press office.

- **Government Legal Services**

103. The Government Legal Services is a permanent office of the government reporting directly to the Prime Minister. Among the responsibilities is the ongoing adjustment of the Taliban Ordinance to UNSCR/1267(1999).

- **Financial Intelligence Unit (FIU)**

104. The financial intelligence unit (FIU) is the central State office for obtaining and analyzing information necessary for the recognition of money laundering, predicate offenses of money laundering, organized crime, and terrorist financing. It is also the office to which suspicious activity reports (SARs) are submitted and is described by the authorities as an essential element of the State regulation system contributing to the protection of the Liechtenstein financial center from abuse. Seven staff members are employed in the FIU.

105. The Law on the Financial Intelligence Unit (FIU Act) of March 14, 2002, which entered into force on May 8, 2002, created the formal legal basis for the FIU. This law replaced the previous Ordinance on the Financial Intelligence Unit of February 22, 2001 as the legal basis for the FIU. The content of the FIU Act specifies the competencies and responsibilities, as well as the rights and duties of the FIU in connection with obtaining and

analyzing information for the recognition of money laundering, predicate offenses of money laundering, organized crime, and terrorist financing. The focus is on the competence to receive reports pursuant to Article 16, paragraph 1 and Article 17, paragraph 1 of the Due Diligence Act.

- **National Police**

106. The National Police is divided into the armed police corps and the civilian, unarmed service branches, and the riot police and reports to the government. According to the Police Act, the National Police responsibilities include, inter alia:

- Conducting investigations pursuant to the Code of Criminal Procedure;

- Executing assignments by government offices, administrative authorities, and courts, to the extent laws or ordinances so provide; and

- Supporting the prevention of accidents and crime.

107. Organizationally, the National Police is structured into the Safety and Traffic Division, the Criminal Police Division, and the Command Services Division. The Chief of Police is the head manager of the National Police. He is supported by the Chief of Staff, who is responsible for the administration and also serves as the head of the Command Services Division. The Chief of Police and the division heads constitute the Executive Staff of the National Police. As of September 2006, the National Police had 118 staff members, 85 of whom were police officers and 33 were civilian employees. Nine staff members work in the Financial Crime section of the National Police.

- **Office of the Public Prosecutor**

108. The responsibility of the Office of the Public Prosecutor is to prosecute, indict, and represent the indictment before the competent court ex officio with respect to all punishable acts of which it learns and that are not merely subject to investigation and punishment on the application of an involved party. The Princely Courts, specifically four investigative magistrates, are responsible for the necessary legal orders and search orders for ML and FT. The Office of the Public Prosecutor safeguards the interests of the State in the administration of justice, in particular with respect to the administration of criminal justice and mutual legal assistance in criminal matters. In the exercise of its responsibilities, it is independent of the courts. Within the framework of the principle of legality, the Office of the Public Prosecutor reviews all reports of punishable acts it receives that must be prosecuted ex officio. If there are sufficient grounds for initiation of proceedings, the Public Prosecutor submits an application for initiation of an investigation or a writ of indictment. Otherwise, he discontinues the proceedings. The Office of the Public Prosecutor represents the State before individual Judges, the Juvenile Court, the Court of Lay Assessors, the Criminal Court, the

Court of Appeals, the Supreme Court, and in Customs Treaty matters, the Cantonal Court of St. Gallen. The Office of the Public Prosecutor employs 12 staff members.

- **Financial Market Authority (FMA)**

109. The FMA is an independent, integrated financial market supervisory authority operating as an autonomous institution under public law. It reports exclusively to the Liechtenstein Parliament, i.e., it is independent of the government and the financial market participants. The FMA has been operational since January 1, 2005, with 29 full-time staff members.

Organs

- the Board, elected by Parliament, term of office 5 years (5 members):
  - overall supervision, mission statement, strategy, organization,
  - finances, plus special powers in important cases
- the General Management, nominated by the Board (4 members):
  - operational management of the FMA
- the National Audit Office serves as the Auditing Office

Objectives

- safeguarding the stability of the Liechtenstein financial center;
- protection of clients;
- prevention of abuses; and
- implementation of and compliance with recognized international standards.

Responsibilities

- supervision and execution of the special legislation;
- regulation, in particular, adoption into domestic law of relevant EEA enactments, in coordination with the government; issuing of guidelines and recommendations;
- representation of the interests of Liechtenstein in international bodies, in coordination with the government.

110. The FMA is the competent authority to supervise the DDA pursuant to Article 23 DDA. It is, therefore, the competent authority for AML/CFT purposes for all financial institutions and DNFBPs in Liechtenstein. In addition, the FMA is mandated by the

government with elaborating proposals to implement international due diligence standards (e.g., the relevant parts of the FATF 40+9 or the third EU Money Laundering Directive). Furthermore, the FMA represents Liechtenstein regarding due diligence issues on an international level. The CEO of the FMA is the head of the Liechtenstein MONEYVAL delegation.

- **Office of Land and Public Registration (GBOERA)**

111. The Public Registry is a register with public access and public evidentiary value, the primary purpose of which is to ensure the legal certainty of commercial transactions by disclosing arrangements under private law, especially liability and representation arrangements, entered into by the natural and legal persons operating in this sphere.

112. Its main responsibilities are:

- Entry of businesses, foundations, establishments, etc.;
- Deposit of documents relating to foundations, trusts/settlements, and other instruments;
- Public authorizations; and
- Clarification of names and business names, performance of the legally-required announcements, various official acts such as monitoring compliance with various requirements (submission of balance sheet, etc.), changes of domicile, reviews, and preliminary reviews.

113. The Public Registry, including the registrations and documentation, is accessible to the public; however, only for persons who can assert a legitimate interest. With respect to companies limited by shares, partnerships limited by shares, and limited liability companies, reviewing and copying register files is permissible upon written request even without certification of a legitimate interest. The review, extracts, copies, or certifications of deposited files and documents (especially the deposit of foundation documents, trust deeds, and the like) may, however, only be demanded by the depositor and the authorized persons, as well as overall legal successors. Accordingly, there is no right of review and information vis-à-vis the Office of Land and Public Registry. Extracts from the register of listed undertakings (Extracts from the Public Registry) may, however, be ordered at any time without evidence of interest. These extracts are generally only issued in certified form and are not sent by fax. The Public Registry is a register with public access and public evidentiary value, the primary purpose of which is to ensure the legal certainty of commercial transactions by disclosing arrangements under private law, especially liability and representation arrangements, entered into by the natural and legal persons operating in this sphere.

- **Role of other authorities**

114. Pursuant to Article 16.1 DDA, all State offices have a duty to report to the FIU in relation to money laundering and financing of terrorism, especially the FMA, the Fiscal Authority, and the Office of Trade and Transportation.

c. Approach concerning risk

115. The authorities indicated that they have introduced risk-based measures by reference to the text of the EU Third Money Laundering Directive, although they may need to revise the current approach as part of the adoption due in 2008 of measures to formally implement the Directive. The authorities also note that Liechtenstein does not pursue its own risk-based policy, as such, in relation to reduced CDD measures. However, the assessors found that, in relation to preventive measures, both the authorities and the private sector representatives interviewed referred frequently and consistently to the application in practice of a risk-based approach. While the implementation of KYC measures was confirmed as mandatory in all cases, the level of perceived risk appeared to be a determining factor in deciding the level of attention given to KYC, the depth of analysis, and the level of enquiries in individual cases. While this approach has merit in principle, the assessors concluded that there may be over-reliance on the risk-based approach when compared to the specific criteria of the FATF Recommendations.

116. A key issue is the perception in Liechtenstein of the meaning of high, normal, and low risk, having regard to the confirmation by the authorities that more than 90 percent of the financial services business in Liechtenstein would be defined as cross-border private banking (or private insurance or asset management services). While not all of this business is inherently risky, much of it would fall within the categories suggested by the FATF methodology as examples of higher-risk business. The assessors found, however, that the financial institutions and relevant DNFBPs in Liechtenstein regarded much of this business as routine and did not see it as, of its nature, constituting risk that should attract higher levels of due diligence on their part. The responses as to what would be regarded as high risk in Liechtenstein consistently referred to a short list of categories that included foreign politically-exposed persons (PEPs) and business from certain geographical regions, particularly in Eastern Europe. As set out below in the detailed assessment, the assessors regarded this approach as falling significantly short of compliance with a number of the FATF Recommendations.

117. Of particular concern was the level of discretion that the legal provisions allow to persons subject to due diligence in identifying the natural persons who are the ultimate beneficial owners or controllers of accounts operated, assets managed, or legal structures created in Liechtenstein. While the beneficial owner is required to be established, the assumptions which persons subject to due diligence are permitted to make raise concerns as to whether the measures taken are effective in practice, having regard to the inherently high-risk nature of much of the cross-border financial services business in Liechtenstein. The assessment report also notes that Liechtenstein also provides for exemption from CDD of certain categories of business (e.g., particular rental payments in Switzerland) which

indicates that some types of business are classified as low or zero risk for AML/CFT purposes. While these are not major issues, the FATF Recommendations do not allow for such exemption. Overall, the assessors conclude that Liechtenstein financial institutions and DNFBPs apply in practice a risk-based approach that, while proportionate in some instances, is inconsistent with the FATF Recommendations to a significant extent, on both technical and substantive grounds.

d. Progress since the last AML/CFT assessment

1) IMF assessment end-2002

118. In the last OFC assessment of Liechtenstein conducted by the IMF (end of 2002), with respect to the due diligence law, the IMF issued the following main recommendations:

1. the prohibition against tipping-off after a suspicious activity report should be unlimited in time;

2. the blocking of assets after a suspicious activity report should not be automatic, but rather should be ordered by the Financial Intelligence Unit as required;

3. there should be an administrative penalty for a breach of the prohibition against tipping-off; and

4. in the case of banks, due diligence inspections and audits pursuant to banking supervision law should be consolidated and carried out by the same auditor.

119. The 2002 IMF assessment was based on the 1996 version of the FATF Recommendations and associated assessment methodology. Since the 2002 assessment, Liechtenstein has totally revised the DDA and DDO in the course of implementing the Second EU Money Laundering Directive. The revised enactments entered into force on February 1, 2005, entailing the following principal changes:

- Extension of the object of the Act to the suppression of terrorist financing;

- Extension of the personal scope of application to auditors, audit companies, and audit offices appointed under special laws, and more precision concerning the material scope of application;

- New obligations relating to correspondent bank relationships and electronic payment orders, as well as with regard to shell banks and passbooks, accounts, and custody accounts payable to bearer;

- Obligation of risk-adequate and global monitoring;

- Competence of the FMA; and

- Inclusion of the provisions in the Act on mandating auditors, audit companies, and audit offices appointed under special laws to conduct due diligence inspections.

120. With respect to the specific recommendations of the 2002 IMF assessment, the following was the position at the time of the 2007 assessment:

- The first recommendation has not been implemented so far. It was based on the rule in force at the time providing for a prohibition against tipping-off for 10 days, with the possibility of extension by 20 days. As part of the revision of the DDA, this rule was adjusted so that a prohibition against tipping-off of 20 days without the possibility of extension is provided for. In the Report and Application to Parliament, prepared in the context of the revisions proposed to the DDA, the government stated: "Already before the consultation procedure, the government had encountered wide-spread resistance among persons subject to due diligence against a 'life-long' prohibition against tipping-off. It recognizes that such a solution would be unduly burdensome for the persons subject to due diligence, since they would accordingly not have the possibility of subsequently explaining any irregularities that may have arisen from the prohibition against tipping-off to clients or other persons subject to due diligence or foreign financial intermediaries with whom they work together on a regular basis. […] The duration of 20 days now recommended is a compromise solution with the aim of ensuring legal certainty."

- The second recommendation has been taken into account in part in that the revision of the DDA has introduced "flexible" blocking of assets. Assets continue to be blocked as before, however, only for a maximum of five days. However, the blocking may be suspended by the FIU for specified individual transactions.

- The third recommendation has been implemented in the meantime by Article 30.1(k) DDA in the course of the revision of the DDA.

- The fourth recommendation was taken into account in 2003 through a change in practice. This practice has now been enshrined in law in Article 24.5 of the revised DDA.

2. MONEYVAL mutual evaluation, 2003

121. The following list records progress (indicated in bold) made by the Liechtenstein authorities in addressing the main recommendations of MONEYVAL's second round mutual evaluation report which was adopted in June 2003.

- Ensure sustainability of the progress achieved by providing for staff continuity at key positions of the anti-money laundering system and offering further training to local professionals;
  Staff continuity, particularly in key positions, has been assured since the time of the assessment.

- Monitor, with the scope of reducing, the over-reliance of the financial sector on the FIU in filing suspicious reports;

This recommendation has not been implemented and the consulting process has been retained.

- Revisit Article 8(1) of the DDA which still refer to a "strong suspicion";
  Implemented as part of the revision of the DDA which came into force in 2005.

- Revise Articles 9 (5) and (6) of the DDU with the scope of sanctioning tipping off and introduce penalties;
  Article 9 DDA revised in that the freezing period reduced to five days and the tipping off prohibition period extended to 20 days. Criminal sanction for tipping off introduced.

- Empower the FIU to have access to all necessary information for its analysis, including information related to beneficial ownership, and provide a legal basis for its access to databases;
  This situation has remained unchanged.

- Specifically prohibit (by law or executive orders) the further opening of bearer accounts;
  Bearer passbooks prohibited by amendment of the DDA effective February 1, 2005.

- Introduce a system of enhanced customer due diligence and supervisory monitoring with regard to numbered accounts as well as appropriate guidance to compliance and due diligence officers for the identification of suspicious transaction specific to these accounts;
  Numbered accounts included in list of indicators of ML in annex to FMA Guideline 2005/1.

- Take adequate measures to deal with bearer shares such as prohibiting their use in the capital of banks and other financial institutions or introducing a mandatory obligation to register transfers of such bearer shares at the counters of the institution itself with notification to the regulator;
  Some measures to address the risks of bearer shares have been taken by implementing the Article 180a regime whereby at least one Liechtenstein resident is required to be a director of every company that is not commercially active.

- Introduce an obligation for the Registrar of companies to ascertain prior to registration the veracity of data concerning entities seeking registration and prohibit the use of general "power-of-attorney" for managing such entities;
  Implemented by amendments to Article 960.f and 964 PGR (LGB1.2003 Nr. 63).

- Address reporting obligations by supervisory authorities where suspicious transactions are encountered in the course of their supervisory work;
  Implemented by Article 16 DDA.

- Further extend the list of predicate offenses to cover all criminal offenses, including all misdemeanors, but at least those covered by the second EU Directive and keep professionals abreast of changes in the list;

List of predicate offenses extended, including misdemeanors, other than fiscal offenses.

- Merge paragraphs 1 and 2 of Article 165, raise the level of penalty up to 3 years of imprisonment for money laundering offenses under Article 165, paragraph 2 and delete the phrase "committed by another person" from the text of the provision and delete paragraph 5 of Article 165;
  Implemented through amendment of Article 165 StGB.

- Introduce corporate criminal liability;
  Not implemented.

- Restrict the conditions under which assets cannot be forfeited from *bona fidae* third parties pursuant to Article 20c of the Criminal Code and Article 354 of the Code of Criminal Procedure;
  Not implemented.

- Ratify the Vienna Convention and the 1978 Additional Protocol to the ECMA; consider joining the Second Additional Protocol to ECMA; reconsider domestic policy barring mutual legal assistance in fiscal matters;
  Vienna Convention ratified on March 9, 2007; Second Additional Protocol to ECMA considered but not adopted; bar on MLA for certain fiscal matters removed on July 27, 2007.

- Increase substantially FIU staff.
  FIU staff increased.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalization of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

Criminalization of Money Laundering (c. 1.1 - Physical and Material Elements of the Offense):

122. Liechtenstein has ratified the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (the Vienna Convention) on March 9, 2007 and has signed but not yet ratified the United Nations Convention Against Transnational Organized Crime (the Palermo Convention).

123. Liechtenstein's Criminal Code, the Stafgesetzbuch (StGB), is modeled on the Austrian Criminal Code. Money laundering is criminalized through Article 165 StGB. The last amendments to the provision took place in 2000 (inclusion of self-laundering in Article 1.1) and 2003 (Article 1.6 was added and terrorism financing became a predicate offense for money laundering). Article 165 StGB provides that the offense of money laundering is committed by:

(1) anyone who hides asset components originating from a crime, a misdemeanor under Articles 278d or 304 to 308 StGB or a misdemeanor under the Narcotics Act, or conceals their origin, in particular by providing false information in legal transactions concerning the origin or the true nature of the ownership or other rights pertaining to the power of disposal over, the transfer of, or concerning the location of such asset components; and

(2) anyone who appropriates or takes into safekeeping asset components originating from a crime, a misdemeanor under Articles 278d or 304 to 308 StGB, or a misdemeanor under the Narcotics Act committed by another person, whether with the intention merely to hold them in safekeeping, to invest them, or to manage them, or who converts, realizes, or transfers such asset components to a third party.

124. The first part of Liechtenstein's money laundering offense covers the concealment or disguise of proceeds of crime. The second part criminalizes the acquisition and possession, as well as the conversion, use, or transfer of proceeds of crimes committed by a third party.

The Laundered Property (c. 1.2 and 1.2.1):

125. According to Article 165.4 StGB, proceeds are criminal if they have been obtained through the offense or received for the perpetration of the offense, including assets that represent the value of the assets originally obtained or received. Therefore, both direct and converted proceeds are covered. The law does not provide for a definition of "Vermoegensbestandteile" (asset components). However, a commentary to the StGB provides that the term "Vermoegenswerte" is to be understood in a broad sense and would include corporeal as well as incorporeal property and all assets representing financial value, including claims and interests in

such assets.[7] The offense of money laundering, therefore, extends to any type of property, regardless of its value, that represents the proceeds of crime.

126. Article 165 StGB does not require a conviction for a predicate offense to prove the illicit origin of proceeds. However, independently from the proceedings pertaining to a specific predicate offense and based on the evaluation of free evidence, the judge in the course of criminal proceedings pertaining to Article 165 StGB has to be convinced that a predicate offense has been committed and that proceeds have been derived through the commission of the crime. At the time of the assessment, there was no conviction for money laundering in Liechtenstein. The assessors could, therefore, not establish the level of proof required to determine the illicit origin of proceeds and how specific the proof has to be in relation to a particular predicate offense.

The Scope of the Predicate Offences (c. 1.3):

127. Article 165 StGB provides that all felonies and some misdemeanors are predicate offenses for money laundering. The following FATF-designated predicate offenses are covered by Article 165 StGB. For most categories listed below, Liechtenstein law provides for a range of offenses.

- Participation in an organized criminal group and racketeering: Article 278a and 278b StGB;
- Terrorism, including terrorist financing: Article 278b and 278d StGB;
- Trafficking in human beings and migrant smuggling: Articles 217 and 104 StGB;
- Sexual exploitation, including sexual exploitation of children: Articles 200, 201.2, 204, 205, 206, 208.2, and 212.2 StGB;
- Illicit trafficking in narcotic drugs and psychotropic substances: All misdemeanors in the Betaeubungsmittelgesetz (Narcotics Act) are predicate offenses for money laundering, including the sale or procurement of narcotics, the financing of narcotic trafficking or the procurement of financing of narcotics;
- Illicit arms trafficking: Article 20 Waffengesetz (Arms Act), Articles 33-36 Kriegsmaterialiengesetz (Act on War Material);
- Illicit trafficking in stolen and other goods: Article 164.3 StGB;
- Corruption and bribery: Articles 304, 305, 306, 307, and 308 StGB;
- Fraud: Articles 147.2, 148, 148a2, 153.2, and 156 StGB;
- Counterfeiting currency: Articles 232, 233.2, 234, and 237 StGB;

[7] Dr. Frank Hoepfel, Dr. Eckart Ratz, *"Wiener Kommentar zum Strafgesetzbuch"*, Vienna: Manz, 2004.

- Counterfeiting and piracy of products: Article 60.2 Markenschutzgesetz (Law Concerning Brand Protection);
- Environmental crimes: No offenses;
- Murder, grievous bodily injury: Articles 75, 76, 77, 78, 79, 85, 86, 87, 92.2, and 96.2 StGB;
- Kidnapping, illegal restraint and hostage-taking: Articles 99.2, 100, 101, 102, 103, 104, and 106 StGB;
- Robbery or theft: Articles 142, 143, 144, 145, 128.2, 129, 130, 131, 132.2, and 133 StGB;
- Smuggling: No offenses;
- Extortion: Articles 144.3 and 145 StGB;
- Forgery: No offenses;
- Piracy: Article 185 StGB; and
- Insider trading and market manipulation: Article 23.1 Marktmissbrauchsgesetz (Market Abuse Act) covers insider trading; there is no predicate offense for market manipulation.

128. Fiscal offenses, including serious and organized fiscal fraud, are not predicate offenses for money laundering under Liechtenstein law.

129. Whereas most designated categories of predicate offenses are covered, as outlined above, Liechtenstein law does not provide for predicate offenses in the categories of environmental crimes, smuggling, forgery, and market manipulation.[8] Even though the authorities held the view that the crimes of "willful endangerment through nuclear energy or ionizing radiation", "willful endangerment through explosives" and "preparation of a crime with nuclear energy" would constitute "environmental crimes", these offenses punish harm to or endangerment of the physical integrity of persons and/or property; they do not provide for criminal liability in cases where the environment is harmed or endangered.

Threshold Approach for Predicate Offenses (c. 1.4):

130. Liechtenstein has adopted a combined approach, listing all felonies and a number of misdemeanors as predicate offenses for money laundering. Felonies are intentional offenses sanctioned with life imprisonment or imprisonment of more than three years, whereby the maximum sanction is the determining factor for the differentiation between felonies or

[8] A new law that added Article 278 StGB, Articles 23.1 and 2 Bundesgesetz ueber Aufenthalt und Niederlassung der Ausländer (Law on the Temporary and Permanent Residence of Foreign Nationals), and Article 76 Mehrwertsteuergesetz (Law Concerning Value Added Tax) to the list of predicate offenses for money laundering came into force on July 27, 2007, beyond the time range for consideration as part of this assessment. The categories of smuggling and forgery are covered under the new law.

misdemeanor. Misdemeanors listed as predicate offenses for money laundering relate to terrorist financing, official corruption and misconduct by public officials, and offenses of the Narcotics Act, including sale or procurement of narcotics, financing narcotic trafficking, or the procurement of financing of narcotics.

Extraterritorially-Committed Predicate Offenses (c. 1.5):

131. According to Article 65 StGB, Liechtenstein's criminal law is applicable to all conduct that occurred in another country and if the act is punishable in that country and (1) the offender is a citizen of Liechtenstein at the time of commencement of the proceedings or was a citizen of Liechtenstein when the offense was committed or (2) the offender is a foreign national but is located in Liechtenstein and is not being extradited for reasons other than the type of the offense. The prosecutor stated that "punishable" referred to criminal sanctions. Therefore, all predicate offenses for money laundering under Liechtenstein law extend to conduct that occurred in another country, where the conduct constitutes an offense in that country.

Laundering One's Own Illicit Funds (c. 1.6):

132. Article 165.1 StGB criminalizes the concealment or disguise of criminal proceeds, regardless of whether the predicate offense has been committed by the offender or a third party. Article 165.2, however, determines that the acquisition, taking into custody, conversion, use, or transfer of proceeds of crimes shall only be criminalized if the predicate offense has been committed by a third party. Self-laundering is, therefore, not criminalized for the acts of acquiring, taking into custody, converting, using, or transferring criminal proceeds. While the assessors accept that the fundamental principle of "ne bis in idem" precludes the criminalization of self laundering with respect to "appropriation and taking into custody", the argument cannot be accepted with regard to "conversion, use and transfer" of proceeds. These acts clearly constitute crimes that are distinct from and go beyond the underlying predicate offense. Article 165.5 further establishes that a person who has been punished for "participation" in the predicate offense may not be punished for money laundering. Even under Article 165.1, a person may, therefore, only be criminally liable for self-laundering if he/she has not been held liable for the predicate offense. Although the purpose of the 2000 amendment was to include self-laundering in the offense of money-laundering, it seems that the circumstances in which self-laundering may be prosecuted are still rare. It does not appear that the lack of criminalization of self-laundering is based on fundamental principles of Liechtenstein law.

Ancillary Offenses (c. 1.7):

133. Attempting, aiding and abetting, facilitating, and counseling the commission of an offense are criminalized under the general provisions of the StGB. Article 15 StGB provides that sanctions for an offense are not only being applied to completed crimes but also to attempted crimes and for any participation in attempted crimes. An act is considered attempted when the perpetrator decides to carry out or to direct another person to carry out the act and takes a step which immediately precedes the commission of the crime. An offender may not be sanctioned

for attempt if he voluntarily abandons the commission of the crime or prevents the commission of the crime or voluntarily prevents the consequences of the crime. Article 12 StGB provides that not only the immediate offender is committing the offense, but everybody who directs another person to commit an offense or who contributes to the commission of the offense in any way. For Articles 12 and 15 StGB to apply, the offender at a minimum has to attempt the commission of a criminal offense. While Article 278 StGB criminalizes the "association" of three or more persons for the purpose of, amongst other crimes, money laundering pursuant to Article 165 StGB, the scope of the conspiracy offense does not extend quite far enough in that a conspiracy involving only two people is not covered. The argument by the authorities that a fundamental principle of Liechtenstein law, according to which only committed offenses and attempts may be criminalized (Für's Denken kann man nicht Henken), would preclude the criminalization of conspiracy to commit money laundering cannot be a valid argument for two reasons. First, the mentioned principle does not seem to preclude criminalization of "association" of three or more people to commit money laundering. Secondly, Article 277 StGB expressly criminalizes conspiracy by two or more persons to commit murder, kidnapping, robbery, arson, and several other listed crimes.

134. Additional Element - If an act overseas which does not constitute an offense overseas, but would be a predicate offense if occurred domestically, lead to an offense of ML (c. 1.8):

135. According to Article 64 StGB, Liechtenstein's criminal law is applicable to a list of designated offenses committed in a third country and regardless of the criminal provisions of that country. Among others, the list of designated offenses includes money laundering if the predicate offense has been committed in Liechtenstein as well as terrorist financing where (1) the offender is a citizen of Liechtenstein at the time of commencement of the proceedings or was a citizen of Liechtenstein when the offense was committed or (2) the offender is a foreign national, located in Liechtenstein, and cannot be extradited. Offenses listed in Article 64 StGB are, therefore, predicate offenses for money laundering regardless of whether or not the conduct is punishable in the third country where the conduct occurred.

Liability of Natural Persons (c. 2.1):

136. The language of Article 165 StGB does not provide for a specific intent, such as knowingly. It also does not provide for sanctioning of negligence. Article 7 StGB provides that all crimes are willful crimes, unless the law provides otherwise. According to Article 5 StGB, a person acts willfully if he/she wished to bring about facts that constitute a crime or seriously believes that facts which constitute a crime might be brought about and accepts that possibility (*dolus eventualis*). The Vienna and Palermo Conventions require the perpetrator to act in the knowledge that the laundered proceeds are criminal. Intent as defined in Liechtenstein law is less strict than knowingly and therefore meets the international standard.

The Mental Element of the ML Offense (c. 2.2):

137. Article 205 StPO provides for the application of the general principle of free assessment of evidence in criminal cases. According to this principle, the judge is not bound by strict rules in assessing and evaluating the evidence gathered but may decide according to his own conviction. In a final decision related to aggravated fraud, the Liechtenstein Supreme Court decided that the principle of free evaluation of evidence allows for the intentional element of a criminal offense to be inferred from objective factual circumstances (KG 2003.3). This interpretation would also be applicable to the money laundering offense.

Liability of Legal Persons (c. 2.3 and 2.4)

138. Liechtenstein law does not provide for criminal corporate liability. In limited circumstances, a legal entity may be held responsible for fines and procedural costs imposed on one of its organs. Although Article 111 PGR provides for criminal liability of corporate entities, the prosecutor stated that the PGR, as a civil law, could not, by itself and without a provision in the StGB to that effect, be used as a basis for the initiation of criminal proceedings. Where a violation of the DDA occurs in the course of the business of a legal person, the penal provisions apply to the person who acted on behalf of the legal entity. However, based on Article 33 DDA, a legal person or trust asset may be jointly and severally liable for fines and costs that have been imposed on that person.

Sanctions for ML (c. 2.5):

139. Article 165.1 StGB is sanctioned with imprisonment of up to three years or a fine. Article 165.2 StGB is sanctioned with imprisonment of up to two years or a fine. If any act described in the two provisions is committed in relation to assets of a criminal organization or a terrorist organization and the offender acts on instructions or in the interest of such an organization, the offense may be sanctioned with imprisonment of up to three years. If assets in excess of CHF75,000 are involved or the offense is committed by a member of a gang according to Article 278 StGB, the conduct may be sanctioned with imprisonment of six months to five years. The sanctions for money laundering are also applicable to attempting, aiding and abetting, facilitating, and counseling the commission of the offense.

140. The sanctions available for money laundering (as set out in the table below) are in line with sanctions applicable to other offenses in the StGB (up to two years for active bribery, six months to five years for terrorism financing, up to six months or a fine for fraud, up to three years for aggravated fraud, up to three years for breach of trust, and six months to five years for extortion). Only few criminal offenses are punished with stricter sanctions (up to 10 years for counterfeiting currency, for breach of trust with particularly heavy damage, for fraud with particularly heavy damage, for fraud as a business, and for fraudulent bankruptcy with particularly heavy damage). No penalties have actually been imposed by Liechtenstein courts for money laundering.

Money Laundering–hiding or concealing the origin of assets pursuant to Article 165(1) StGB	Imprisonment up to three years or a fine

Money Laundering–appropriating, taking into safekeeping, converting, realizing, or transferring assets pursuant to Article 165 (2) StGB	Imprisonment up to two years or a fine
Money Laundering–Articles 165(1) and (2) StGB if assets of a criminal or terrorist organization are involved	Imprisonment up to three years
Money Laundering –Articles 165 (1) and (2) StGB if assets exceed CHF75,000 or if committed by a member of a gang	Imprisonment of six months to five years

141. By comparison, Switzerland sanctions money laundering with imprisonment of up to three years or up to four years in particularly grave cases. Austria sanctions money laundering with up to two years imprisonment or six months to five years if the act is committed as a member of a criminal organization or involves assets in excess of EUR40,000. Germany provides for sanction of three months to five years or six months to 10 years if the offense is a particularly grave case or is committed as a member of a criminal organization.

Analysis of Effectiveness

142. Statistics kept at the Office of the Public Prosecutor show that since 2003, 128 cases of money laundering have been investigated under Article 165 StGB, of which 36 investigations were conducted in 2006. Only two out of these 128 cases were actually prosecuted under Article 165 StGB. Both prosecutions were triggered by suspicious activity reports. One of the prosecutions related to self-laundering in accordance with Article 165.1 StGB, whereas the second was prosecuted under Article 165.2 StGB. The first case was transferred to the Spanish courts. The second case is currently being heard before the Liechtenstein courts. 11 cases have been transferred to other jurisdictions, of which two led to a conviction for money laundering, one led to a conviction for a predicate offense, and eight cases are still pending. Although there have been a number of convictions for violation of the DDA and the commission of predicate offenses, in particular breach of trust, there were no convictions for money laundering under Article 165 StGB. According to the public prosecutor, money laundering investigations would in many cases lead to in rem proceedings and result in the forfeiture of considerable amounts. Furthermore, money laundering investigations would often be conducted with a view to collecting evidence for prosecutions in other jurisdictions. All these proceedings are classified as terminated investigations in the statistics.

Statistics on money laundering offenses under Article 165 StGB

	2003	2004	2005	2006
Investigations	25	34	33	36
Prosecutions	0	0	1	1
Convictions	0	0	0	0
Transfer of proceedings to another jurisdiction	1	3	4	3

143. According to the public prosecutor, there were two main reasons for the low number of prosecutions and convictions: Firstly, in typical money laundering cases, neither the location

where the predicate offense has been committed nor the location of the offender is Liechtenstein. Rather, cases are linked to Liechtenstein through a single transaction, the use of a front company incorporated in Liechtenstein, or a Liechtenstein financial intermediary. In such cases, it would be difficult to collect the necessary evidence, such as witness statements and documents from other countries, in particular from countries outside Europe. In addition, in cases where the launderer has been convicted for the predicated offense abroad, he/she may no longer be held liable for money laundering under Liechtenstein law. Secondly, in cases that involved Liechtenstein trustees, the investigation often revealed negligence on the part of the suspect trustee, which would allow a prosecution of a DDA and/or DDO violation. However, it was difficult to prove the required intent by the trustee needed to initiate prosecutions for money laundering. Furthermore, in cases where intent could be established, the offender was typically prosecuted for the predicate offense rather than the money laundering offense.

144. The assessors agree that Liechtenstein might be in a more difficult position to prosecute money laundering given the sometimes weak links of cases to conduct or individuals located in Liechtenstein. Out of consideration of efficiency, it seems reasonable to transfer cases to other countries when essential information is present in these countries. However, the assessors would consider it important that Liechtenstein also develops its own case law to establish that money laundering is a stand-alone offense and may be prosecuted independently from prosecutions relating to the predicate offense. This would also clarify the level of proof required to determine that proceeds are illicit and how specific the evidence has to be in relation to a particular predicate offense.

2.1.2 Recommendations and Comments

R.1

- Amend the law to extend the list of predicate offenses for money laundering to offenses in the categories of environmental crimes, smuggling, forgery, and market manipulation.

- Amend the law to extend the offenses of converting, using, or transferring criminal proceeds to include criminal proceeds obtained through the commission of a predicate offense by the money launderer.

- Amend the law to eliminate Article 165.5 StGB to permit the prosecution for money laundering also in cases where the offender has been punished for the predicate offense.

- Amend the law to criminalize the association or conspiracy of two persons to commit money laundering.

- Develop jurisprudence on Article 165 StGB autonomous money laundering.

R.2

- Amend the law to provide for criminal liability of corporate entities.

- Develop jurisprudence on Article 165 StGB autonomous money laundering.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating[9]
R.1	**PC**	• At the time of the assessment, no offenses in the categories of environmental crimes, smuggling, forgery, and market manipulation were predicate offenses for money laundering. • The law does not criminalize self-laundering in relation to converting, using, or transferring criminal proceeds. • Prosecution for money laundering is not possible in cases where the offender has been convicted for the predicate offense. • Association or conspiracy of two persons to commit money laundering is not criminalized.
R.2	**LC**	• There is no criminal liability of corporate entities. • Liechtenstein has not yet developed its own case law on money laundering.

2.2 Criminalization of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

145. Liechtenstein signed and ratified 12 out of the 13 international conventions and protocols relating to the fight against terrorism, including the UN Convention for the Suppression of the Financing of Terrorism. It has signed the International Convention for the Suppression of Acts of Nuclear Terrorism, with ratification being expected in 2008.

Criminalization of Financing of Terrorism (c. II.1):

146. Liechtenstein has criminalized the financing of terrorism pursuant to Article 278b, 278c, and 278d StGB:

147. According to Article 278d, any person who provides or collects funds with the intention that they be used, in full or part, to carry out any of the listed acts is criminally liable. Article 278d 1.1–1.7 StGB cover all acts that constitute an offense within the scope of and as defined in the 9 treaties listed in the annex of the International Convention for the Suppression of the Financing of Terrorism. Article 278d 1.8 further provides that terrorism financing covers any "criminal offense intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the goal of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing an act." The scope of this generic provision is limited in comparison with the international standard, as the latter considers a

[9] These factors are only required to be set out when the rating is less than Compliant.

terrorist act to be "any act" committed with the required intent, regardless of whether or not the act is considered a criminal offense in that country.

148. Article 278b.2 StGB provides that anyone who supports a terrorist group financially shall be criminally liable. Article 278b.3 in connection with Article 278c StGB defines terrorist organization as an association of more than two persons aimed at the commission by one or more members of the association of one or more terrorist acts listed in Article 278c StGB. However, the definition of terrorist act as contained in Article 278c StGB, although covering many kinds of conduct that are considered terrorist acts under the standard, is not fully in line with the Article 2 of the International Convention for the Suppression of the Financing of Terrorism for the reasons set out in the following paragraphs.

149. First, Article 278c StGB does not cover all offenses as defined in some of the UN Conventions listed in the annex of the Suppression of the Financing of Terrorism Convention. The conventions in question are:

1) Convention on the Physical Protection of Nuclear Materials;

2) Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation.

150. Secondly, the acts listed in numbers 1–10 of Article 278c StGB are only considered terrorist acts if the conduct is "qualified to result in serious or enduring disruption of public life or serious damage to economic activity, and if the act is committed with the intention of intimidating the population in a grave way, to coerce public authorities or an international organization into an act, acquiescence, or omission, or to seriously unsettle or destroy the fundamental political, constitutional, economic, or social structures of a State or international organization." Under the Convention, the funding of the acts that constitute offenses defined in the nine UN Conventions is to be prohibited regardless of such circumstances. For example, the financing of "the possession of nuclear material" with required intent or to "seize or exercise control over a fixed platform by force or threat thereof" is to be criminalized regardless of whether or not these acts are qualified to bring about the above-referenced results. Accordingly, Liechtenstein's criminalization of the financing of terrorist acts is not as broad as that required.

151. Thirdly, "terrorist act" as defined in Article 278c StGB does not cover the generic offense of "any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing an act." Rather, it covers specific kinds of acts (murder, bodily injury, etc.) that already constitute criminal acts under Liechtenstein law where the purpose of such acts is similar.

152. The result is that, although in practice much conduct would be covered, the definition of "terrorist group" pursuant to Article 278b in connection with Article 278c StGB is not fully in line with the international standard. Some conduct of a terrorist group might not come within the

ambit of Liechtenstein's law and the funding thereof would not be criminalized under these provisions.

153. In addition, Liechtenstein law does not directly and explicitly criminalize the financing of individual terrorists. In some settings, other legal provisions would make it a criminal offense to provide financial support to an individual terrorist. For instance, Article 12 StGB may be used if a person provides financial means to a terrorist and thus "contributes" to the commission of a terrorist act. Similarly, Article 278d could be used to prosecute a person for financing of an individual terrorist where a prosecutor can show that there is *dolus eventualis* that the money is to be used for a future terrorist act. However, the legal framework does not criminalize the financing of individual terrorists in all settings as is required under SR.II.

154. Article 278d StGB requires the offender to collect or provide the funds with the intention that they be used to support terrorist acts. Article 7 StGB provides that all crimes are intentional crimes, unless the law provides otherwise. According to Article 5 StGB, a person acts willfully if he/she wished to bring about facts that constitute a crime or seriously believes that facts that constitute a crime might be brought about and accepts that possibility (*dolus eventualis*). The international standard requires the perpetrator to act willfully. Intent as defined in Liechtenstein law is less strict than willfully and therefore meets the international standard.

155. The scope of the terrorist financing offenses pursuant to Article 278d StGB does not fully meet the scope of the offense as defined in the Interpretative Note to SR.II. Furthermore, the definition of terrorist organization is not fully in line with the international standard and the financing of individual terrorists is not explicitly criminalized.

156. The law does not provide for a definition of "Vermoegenswerte". However, a commentary to the StGB provides that the term "Vermoegenswerte" is to be understood in a broad sense and covers legitimate as well as illegitimate funds, corporeal as well as incorporeal property, and all assets representing financial value, including claims and interests in such assets.[10]

157. Article 278d StGB provides that the offense of terrorist financing is committed when a person collects or provides funds with the intention to support a terrorist act. The language of the provision does not require that funds have actually been used to carry out or attempt to carry out a terrorist act or that the funds collected/provided are linked to a specific act on the list. This was confirmed by the assessors in discussions with the public prosecutor.

158. Article 15 StGB provides that sanctions for an offense are not only being applied to completed crimes but also to attempted crimes and for any participation in attempted crimes. An act is considered attempted when the perpetrator decides to carry out or to direct another person to carry out the act and takes a step which immediately precedes the commission of the crime. An offender may not be sanctioned for attempt if he voluntarily abandons the commission of the

[10] Dr. Frank Hoepfel, Dr. Eckart Ratz, *"Wiener Kommentar zum Strafgesetzbuch"*, Vienna: Manz, 2004.

crime or prevents the commission of the crime or voluntarily prevents the consequences of the crime.

159. Article 12 StGB provides that not only the immediate offender is committing the offense but everybody who directs another person to commit an offense or who contributes to the commission of the offense in any way. Anybody who participates as an accomplice, organizes or directs another, or contributes in the commission of terrorist financing may therefore be criminally liable for the commission of the offense.

Predicate Offense for Money Laundering (c. II.2):

160. Based on Article 165.1 and 2, terrorist financing is a predicate offense for money laundering.

Jurisdiction for Terrorist Financing Offense (c. II.3):

161. Article 62 StGB provides that Liechtenstein's criminal laws are applicable to all conduct committed in Liechtenstein. Article 63 StGB provides that Liechtenstein's criminal laws also apply to all conduct on a vessel or aircraft of Liechtenstein, regardless of where the vessel/aircraft is located. Article 64.11 StGB provides that terrorism financing committed in a third country is a criminal offense in Liechtenstein, regardless of whether conduct is a criminal offense in the country where it occurred, if (1) the perpetrator is a citizen of Liechtenstein at the time of the commission of the offense or (2) the perpetrator became a citizen of Liechtenstein after the commission of the crime and is still a citizen of Liechtenstein at the time that criminal procedures are commenced. Furthermore, it is a criminal offense if conduct occurred in a third country, the perpetrator is a citizen of a third country, but is now located in Liechtenstein and may not be extradited.

The Mental Element of the FT Offense (applying c. 2.2 in R.2):

162. Article 205 StPO provides for the application of the general principle of free assessment of evidence in criminal cases. According to this principle, the judge is not bound by strict rules in assessing and evaluating the evidence gathered but may decide according to his own conviction. In a final decision related to aggravated fraud, the Liechtenstein Supreme Court decided that the principle of free evaluation of evidence allows for the intentional element of a criminal offense to be inferred from objective factual circumstances (KG 2003.3). This interpretation would also be applicable in relation to the financing of terrorism offense.

Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2):

163. Liechtenstein law does not provide for criminal corporate liability. In limited circumstances, a legal entity may be held responsible for fines and procedural costs imposed on one of its organs. Although Article 111 PGR provides for criminal liability of corporate entities, the prosecutor stated that the PGR, as a civil law could not, by itself and without a provision in the StGB to that effect, be used as a basis for the initiation of criminal proceedings.

Sanctions for FT (applying c. 2.5 in R.2):

164. Financing of terrorist acts based on Article 278d StGB is sanctioned with imprisonment of six months to five years, whereby sanctions imposed for the financing offense may not be more than the sanctions provided for the financed act. The financial support of a terrorist organization based on Article 278b StGB is sanctioned with imprisonment of one to 10 years. No penalties have actually been imposed by Liechtenstein courts for financing of terrorism offenses. By comparison, Switzerland sanctions terrorist financing with up to five years. Austria sanctions the offense with six months to five years.

Financing of terrorism	Imprisonment of six months to five years
Financing of a terrorist organization	Imprisonment of one to 10 years

Analysis of Effectiveness

165. Liechtenstein conducted three investigations in relation to terrorist financing, one in 2001, one in 2004, and one in 2006. The investigation in 2001 was initiated by the Swiss authorities. The investigation did not support any suspicions and was terminated in 2004. The other two investigations were initiated by Liechtenstein authorities. One of the two investigations has been terminated, while, in the second case, the proceedings were referred to the Spanish authorities. This investigation was triggered by a suspicious activity report filed by a Liechtenstein financial intermediary.

2.2.2 Recommendations and Comments

- Amend the law to criminalize the financing of individual terrorists.
- Amend Article 278d StGB to provide for "any act" committed with the required intent, not only criminal offenses, to constitute a terrorist act.
- Provide for a definition of "Terrorist organization" in line with the FATF standard.
- Amend the law to provide for criminal liability of corporate entities.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• The financing of individual terrorists is not explicitly criminalized and not all instances of such financing are currently covered under the legal framework as is required under SR.II. • As Liechtenstein's definition of "terrorist organization" references a definition of "terrorist acts" and not all acts considered terrorist acts under the international standard are covered by this definition, the financing of terrorist organizations is not criminalized in all instances required by SR.II. • Article 278d StGB only provides for "criminal offenses" and not for

		any other acts committed with the required intent to be terrorist acts. • There is no criminal liability of corporate entities. • The lack of prosecutions and convictions for terrorist financing make it difficult to assess the effectiveness of the legal framework.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

166. Legal Framework:

Confiscation of Property related to ML, FT, or other predicate offenses including property of corresponding value (c. 3.1):

Conviction based confiscation

167. The Penal Code provides for three distinct forms of confiscation: Abschöpfung der Berreicherung, Verfall, and Einziehung.

A. Proceeds

I. The general rules on confiscation of criminal proceeds are laid down in Article 20 StGB.

1) Abschöpfung der Berreicherung (literally: "deprivation of enrichment") relates to all "pecuniary benefits" derived from a criminal offense or received to perpetrate such act. On conviction the offender is ordered to pay an amount of money equal to the "unlawful enrichment". If the amount of the enrichment cannot be determined readily, the court decides at its discretion (ex aequo et bono).
2) In doing so, the court can take into account the fact that
    - the defendant is a repeat or continuous offender and that the crimes[11] he committed generated proceeds or were rewarded, and
    - the benefits he obtained around the time of the commission of the crimes can be assumed to originate from similar crimes, and no credible explanation can be given of the lawful origin (reversed onus).
3) A similar presumption applies against members of a criminal or terrorist organization (Article 278a and 278b StGB) who have obtained benefits at the time of their participation and cannot demonstrate the lawful origin.
4) Individuals, legal entities, or partnerships that profited from criminal activity by a third person are also liable to pay an amount equal to those benefits.
5) In the event of the offender dying or the legal entity being dissolved, the legal successor, bona fide or not, is liable if that benefit still existed at the time of transfer of the rights.

[11] A crime (*"Verbrechen"*) relates to criminal activity punishable with more than three years imprisonment (Article 17 StGB).

6) In case of several beneficiaries, their liability is proportional to their share, with the court deciding ex aequo et bono, if necessary.

II. Article 20b StGB provides for a further legal basis for confiscation ("Verfall"):

1) Assets belonging to criminal or terrorist organizations (as defined in Article 278a and 278b StGB) or being made available or collected in the context of terrorism financing (Article 278d StGB), must be confiscated.

2) Assets derived from criminal activity performed in a foreign jurisdiction are also subject to confiscation even when the predicate offense is not punishable in Liechtenstein, except if it relates to a fiscal (tax) offense.

168. This latter provision effectively reinforces the confiscation regime and preempts all possible discussions on the scope of the measure. All assets that can be linked to a terrorism or terrorism-financing-related situation, as defined in the StGB, are subject to mandatory confiscation once the offense is proven in a conviction or non-conviction-based procedure (as described below). It also deals with any controversy that may derive from the dual criminality principle in respect of the predicate offense. The fiscal exception is a typical feature in the Liechtenstein legal tradition.

169. Equivalent value confiscation is basically captured by Article 20 StGB (payment of amount corresponding with the illegal proceeds). Article 20b StGB in connection with Article 165.4 StGB (money laundering) also provides for a form of equivalent value confiscation in that it goes beyond the direct and indirect proceeds. All assets subject to the power of disposal of a criminal or terrorist organization or criminal proceeds must be forfeited. All these assets are considered to originate from a punishable act, even if in fact they have replaced the original criminal proceeds and represent their equivalent value.

170. Several provisions exclude forfeiture or allow for reducing the amount:

- Article 20a StGB gives priority over confiscation to the payment of damages resulting from the offense and excludes the benefits from forfeiture if the enrichment is absorbed through other legal means. Considerations of proportionality in respect of the procedural efforts and the punishment of the offender may also limit the application of forfeiture.

- Article 20c StGB excludes confiscation of assets that are subject of legal claims of persons who are not involved in the criminal offense or criminal organization, or the purpose of the forfeiture may be achieved by other legal measures, particularly when the illegal benefits are forfeited as a result of foreign procedures enforceable in Liechtenstein. Forfeiture is also refrained from if the measure is disproportionate to the importance of the case or requires exaggerated procedural efforts or costs.

- Article 31a (4) StGB allows for reduction after conviction if circumstances for the offender have changed substantially and the penalty is no longer appropriate.

171. These exclusion or reduction grounds are inspired by two basic considerations: confiscation should not interfere with the compensation of the victims or the rights of the bona

fide third parties, nor should its application give rise to unfair or disproportionate consequences. The principle of the priority of the prejudiced or bona fide third parties over confiscation to the benefit of the State is a universally-accepted principle. The second consideration is born more out of a legitimate concern to avoid exaggerated effects and aims at preserving proportionality. As such, it does not undermine the general confiscation rule; the discretionary phrasing gives the judge some latitude to take special and legally-defined circumstances into consideration to determine the scope of the confiscation measure.

B. Instrumentalities and product

172. Article 26.1 StGB provides for the confiscation ("Einziehung") of objects intended to be or actually used to commit criminal acts (instrumenta sceleris), or that have been produced by such activity (producta sceleris), but only when the specific nature of these items is conducive to the commission of (further) offenses, i.e., dangerous or illegal goods such as drugs, weapons, or forged documents. It is seen predominantly as a security measure, so confiscation of such objects is mandatory also in the absence of a prosecution or conviction (Article 26.3). Instrumentalities that have been rendered harmless or unusable, or where an innocent third party lays legal claim to, with the guarantee that the object(s) will not be used for criminal activity, are generally exempted from confiscation (Article 26.2)

Non-conviction based confiscation

173. Beside criminal forfeiture, which takes priority according to Article 353.1 StPO, the Liechtenstein StPO also provides for the possibility of an in rem (object) forfeiture.

174. Article 353 to 357 StPO install a separate procedure to ensure confiscation in the form of an in rem measure in case the criminal proceedings did or would not suffice to come to a substantiated judgment on this issue, provided there are sufficient grounds to assume that the conditions for forfeiture/confiscation are present. This implies the offense has to be proven according to the rules of evidence applicable to a criminal procedure, i.e., according to the civil law principle of free evidence supply. Such forfeiture orders are issued by a court at the request of the Public Prosecutor and can be directed both against individuals and legal entities. They are mostly used in MLA cases, or when conviction is impossible because of the statute of limitation, or when the defendant is deceased or has absconded (the Liechtenstein criminal procedure rules, as in Article 295 StPO, do not allow for convictions in absentia in serious cases).

Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):

175. The confiscation provision of Article 20 StGB covers all assets ("Vermögensvorteile" literally: "patrimonial advantages") that are the proceeds of crime. There is no formal definition in the law of what is to be understood as "proceeds". The wording is broad enough, however, to encompass not only the direct, but also any indirect proceeds, including substitute assets and

investment yields.[12] The money laundering offense text expressly refers to assets that "represent the value of the asset originally obtained or received" as object of the offense (Article 165.4 StGB). The confiscation measure covered by Article 20 StGB is formulated in such a way as to translate every asset to its equivalent value. Once this order is issued, it is then executed against all assets of the convicted.

176. The relevant provisions do not specify any condition as to the location, possession, or ownership of the assets subject to confiscation. Consequently, in principle, it is irrelevant if they are in the hands of third persons or not.[13]

177. In summary, the legal provisions cover all assets and circumstances that are relevant for an effective anti-money laundering and terrorism financing regime, i.e., direct and indirect criminal proceeds wherever located, instrumentalities intended to be or actually used, and equivalent value. They are effectively used in this context, as the statistics show. Some reservations need to be made, however, that relate to the confiscation of the money laundered as object of the offense and the restriction of the instrumentalities, as described later.

Seizure

178. The seizure regime is incorporated in Article 96, 97a, 98a StPO and is used either for evidentiary purposes or to ensure effective forfeiture/confiscation. Seizure takes the items and assets into judicial custody.

179. Seizure actions require the involvement of the Court pursuant to Article 97a StPO. The procedure is unilateral and does not require prior notification of the interested parties. It is widely used and can be executed in a speedy manner, when necessary to prevent the dissipation of assets. The FIU, the "Kommissariat Wirtschaftskriminalität" (Economic Crime Unit), and the Public Prosecutor have wide authority to identify and trace property that may become subject to confiscation or is suspected of being the proceeds of crime. The police is empowered to immobilize or provisionally seize such items discovered during their investigations (Article 87.2 Organization of the Police Ordinance).

180. The Court issues the seizure order at the request of the Public Prosecutor to safeguard the effective implementation of a confiscation order:

- if a suspicion of illegal benefits exists and it may be assumed that Article 20 StGB is applicable;

[12] Confirmed by Court of Appeal decisions of November 10, 2005 and November 15, 2006, and a Supreme Court decision of February 7, 2006. See also *"Wiener Kommentar zum Strafgesetzbuch, 2004, Verfall"*.

[13] See Supreme Court decision of November 3, 2005 (LES 2006.373): the extension of liability to legal persons in the case of measures under Article 97a StPO (seizing) is permissible if the beneficial owner has used this legal person in a subjectively abusive manner to circumvent the law.

- on suspicion of assets being at the disposal of a criminal or terrorist organization (Articles 278a and 278b StGB) or being made available or having been collected for financing of terrorism (Article 278d StGB); or

- when they originate from criminal activity and it must be assumed that they will be subject to forfeiture ("Verfall") under Article 20b StGB.

181. Although not expressly stated as such, the seizure of instrumentalities subject to confiscation (Article 26 StGB) is also covered by the general provision of Article 96 StPO, imposing judicial custody of all items that are to be confiscated.

182. The seizure order implies:

- the restraint, custody, and management of moveable physical property, including the depositing of money;

- the prohibition to sell or pledge moveable physical property;

- the prohibition to dispose of credit balances or of other assets; and

- the prohibition to sell, burden, or pledge real estate or rights, which is entered in the Land Registry.

183. The seizure order is valid for two years, with possibility of extension. According to Article 97a.4 StPO, the Court shall determine the duration for which the order is issued. This deadline may be extended upon application. If two years have passed since the order was first issued, without an indictment being made or an application submitted for civil in rem forfeiture according to Article 356 StPO, further extension of the deadline for one additional year needs approval of the Court of Appeal.

Identification and Tracing of Property subject to Confiscation (c. 3.4):

184. Articles 96, 97a, and 98a StPO provide the law enforcement authorities with extensive means for identifying and tracking assets.

185. Of specific interest is Article 98a StPO that provides for access to confidential account information, specifically in cases related to money laundering, its predicate offenses, criminal and terrorist organizations, or terrorism financing, with the aim of tracing criminal assets or proceeds and of following the money trail. Within this context the investigative judge can issue an order obliging banks and finance companies to:

- disclose the identity of the holder of a business relationship/account (Article 98a.1.1);

- inform whether a suspect maintains a business relationship with the credit or financial institution or has power of disposal over such a business relationship (account information – Article 98a.1.2);

- inform on the content of the business relationship and the transactions conducted through this relationship for a past or specific future time period (account monitoring – Article 98a.1.3).

186. The general condition for such order is:

- that it must appear "necessary to solve" a case of money laundering, a predicate offense to money laundering, or an offense related to organized crime; or

- that "due to certain facts" there is the assumption of a relation with criminal proceeds (Article 20 StGB) or with a criminal organization, a terrorist group or financing of terrorism (Article 20b StGB).

187. The divergent wording of the precondition depending on the specific offense is, prima facie, not justified by any objective consideration as both criminal phenomena are quite similar.

188. Article 98a.3 StPO expressly stipulates a "tipping off" prohibition against notifying clients or other persons with powers of disposal over the account on the ongoing investigation. This rule also applies to staff of the bank or finance company.

189. The FIU also has tracing powers to a certain extent in that it can, on receipt of a suspicious activity report, demand additional information from the financial intermediary, who is obliged to comply immediately (Article 23.1 DDO). This specific "investigative" power of the FIU does not extend, however, beyond the disclosing entity.

Protection of Bona Fide Third Parties (c. 3.5):

190. In addition to the protection given to the prejudiced third party (civil party) by Article 20a StGB, Article 20c StGB excludes forfeiture of assets if these are subject to legal claims of persons who are not involved in the punishable act or criminal organization. All parties that can show a licit interest in the assets have the right to intervene during the criminal or in rem procedures. Once the proceedings have been concluded with a final forfeiture decision, the innocent bona fide third party may fall back on Article 354.2 StPO to exercise rights over the confiscated assets or claim damages from the State in a civil procedure.

Power to Void Actions (c. 3.6):

191. Seizure is obviously meant to precisely prevent any alienation or burdening of the items subject to confiscation, and to ensure effective and full implementation of the confiscation measures. The bona fide third party protection rules aside, no contract, agreement, or any other civil action can affect the confiscation itself, as they legally cannot be opposed to the penal (confiscation) judge and consequently have no prejudicial or restraining impact on the effective implementation of forfeiture orders.

Freezing

192. After having filed a suspicious activity report with the FIU (Article 16.4 DDA), the persons subject to the DDA have the duty to freeze and restrain the assets in question until they receive a notice from the FIU or the Public Prosecutor or until the period of five working days has elapsed without reaction.

193. Additional Elements (R.3) – Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):

194. Assets of criminal organizations are subject to confiscation according to Article 20b StGB that provides for the forfeiture of any assets belonging to or at the disposal of a criminal organization, as defined by Article 278a StGB.

195. Although forfeiture is primarily criminal-procedure based, there is also the possibility of recovering assets through an in rem forfeiture procedure pursuant to Articles 353 to 357 StPO.

196. Reversal of the burden of proof is provided for in the context of confiscation under certain circumstances (Article 20.2 & 3 StGB).

Statistics

197. The Office of the Public Prosecutor supplied the following statistics on seizures and searches targeting proceeds or evidence related to predicate crimes for money laundering and terrorism-related offenses:

General

	2003	2004	2005	2006
Account seizures	24	24	28	13
House searches and seizures	25 searches 43 seizures	22 searches 54 seizures	17 searches 43 seizures	18 searches 38 seizures

198. A precise amount of the blocked assets could not be provided to the assessors. However, the approximate amount currently blocked is CHF500 million. No accounts were blocked, nor were any house searches or seizures conducted, in terrorism financing cases.

Objective (in rem) forfeiture proceedings

	2003	2004	2005	2006
Pending as of end of previous year	14	31	56	60
New cases	25	43	30	20

Cases completed	13	17	37	29
Applications for forfeiture submitted	1 (4 St.2003.27)	2	4	17
Forfeiture declared	6	3 (in MLA proceedings)	9	15
Amounts declared forfeited to the State	CHF3,748,000 USD15,386,033	CHF77,165 USD125,000	CHF1,620,000 USD280,000	CHF913,072 EUR4,919
Other assets secured, e.g. for injured parties	CHF65 million to Nigeria, CHF8,700 to Triumph, USD12.5 million to USA	CHF46,745 USD125,000	CHF2,252,274 USD1,535,190 EUR3,411,743 (in 5St.2002.18 sharing agreement underway, approx. CHF1.7 million)	CHF1,718,572 USD1,367,300 EUR1,177,154

199. No forfeiture was pronounced in terrorist financing cases.

Analysis of effectiveness

200. The Liechtenstein seizure and confiscation regime is solid and comprehensive and, as such, largely meets the relevant international standards. Because of its mandatory character and the specific situation of Liechtenstein as a financial center, it is being used systematically and to a positive effect.

201. For a civil law tradition-based regime, it shows some uncharacteristic features including the absence of the general principle of the confiscation of the object of the crime and the possibility of in rem confiscation. The possibility for the judge to exclude or limit confiscation out of specific considerations of proportionality is also rather uncommon, but not contradictory to the international standards.

202. Confiscation of the direct and indirect criminal proceeds (including substitute assets and investment yields), the product of the crime, the (intended or used) instrumentalities, and equivalent value is broadly covered by Articles 20, 20b, and 26 StGB. The situation is less clear where the confiscation of the laundered property as the object of the money laundering offense is concerned. There is no problem if the money laundering is prosecuted together with the predicate offense, as then the assets will be confiscated as the proceeds of the predicate offense. In a stand-alone money laundering prosecution, however, the predicate offense is not subject to the jurisdiction of the judge, who can only pronounce himself on the money laundering offense as such. In that case, the assets laundered are not the instrument, nor the product, nor the proceeds of the money laundering, but the object of the offense itself. It is noteworthy that in the case of terrorist-related assets or terrorism financing this is not an issue, because there the need was felt to declare the assets (that are the object of the Article 278a, b, and d StGB offenses) expressly and specifically subject to confiscation (Article 20b.1 StGB). There is no jurisprudence on this issue because no convictions in Article 165 StGB money laundering cases have occurred in Liechtenstein yet. The general solution lies in the application of Article 20b.2 StGB in an in rem, non-conviction based, confiscation procedure. According to this provision, all proceeds must be

confiscated in any case, even when they originate from a foreign predicate criminality that is not an offense in Liechtenstein (the customary exemption of fiscal offenses excepted). This provision was apparently introduced to allow confiscation even if the penal judge in Liechtenstein has no jurisdiction over the predicate offense or no conviction according to Article 20 StGB is possible. But in any case, the criminal confiscation of the laundered assets as object of the offense as such is not covered.

203. In principle, Article 26 StGB covers the confiscation of (intended) instrumentalities. It is, however, seriously restricted by the condition that these objects can only be forfeited when they have a dangerous nature or are apt to be used in other crimes, which, for instance, excludes the confiscation of a car that is used in the commission of illegal acts. Here, forfeiture is seen more as a security measure than a penalty. This soft approach risks undermining the deterrent effect of the measure and may deplete it substantially. As such, it is also contrary to the international standards of Recommendation 3 that do not provide for any restriction to the comprehensive coverage of the seizure/confiscation regime.

204. The absence of corporate criminal liability, which could be an issue in a conviction-based regime, does not cause problems in terms of confiscation of assets held by legal persons. Article 20.4 in fine StGB provides for the liability of the legal persons for the payment of the value of the criminal proceeds. Additionally, there is always the possibility of the in rem procedure in case the criminal procedure cannot be applied.

205. On the other hand, there is a deficiency in safeguarding the efficiency of asset recovery in that nothing is provided for voiding contracts or other actions that have the effect and purpose of obstructing such recovery. Such maneuvers are normally pre-empted by timely conservatory measures, but in case these have not been taken—which would not be exceptional in MLA cases where a confiscation order needs to be executed—it is a problem for which the procedural laws do not provide an appropriate answer.

206. The seizure regime follows the confiscation system. Everything that is subject to confiscation can be seized, thus including equivalent value seizure of untainted assets. The (few) legal deficiencies in the confiscation regime logically also affect the effectiveness of the seizure measures.

207. Article 98a StPO is an efficient instrument to obtain relevant documents and information without the need of conducting a search. However, the different wording of the pre-conditions in the text gives the impression that in the second circumstance related to terrorist organizations and financing, the condition is more specific and stricter (“certain facts”). Apparently, it has not been an issue yet in the absence of such cases, so it will be up to the jurisprudence to provide an answer. More preferable would be that, if the intention was not to differentiate, the formulation would be made identical for all instances.

Statistics and analysis of effectiveness

208. The statistics supplied are partial and only give a good overview of the in rem proceedings and confiscations. There are no overall figures on the seizure and confiscation of criminal proceeds in general, and no figures specifically on the criminal procedure-based seizure and confiscations.

209. The effectiveness of the regime seems quite good, mainly because of the catch-all of the in rem confiscation procedure that closes all (potential) gaps. The system takes into account the specific situation of Liechtenstein as a financial center and focuses particularly on asset recovery, which is widely used.

2.3.2 Recommendations and Comments

- The criminal seizure and confiscation of the laundered assets as the object of the autonomous money laundering offense needs to be formally covered.
- All (intended) instrumentalities must be made subject to seizure and confiscation, irrespective of their nature.
- (Recommendation 32.2): statistics should also comprise overall figures on criminal proceeds seized and confiscated, and on criminal procedure-based seizures and confiscations.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• Seizure and confiscation of laundered assets as object of the ML offense not covered; • Not all instrumentalities subject to confiscation.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

General

210. UNSCR 1267: The Law of May 8, 1991 on Measures pertaining to Economic Transactions with Foreign States provides the legal basis for the Government to implement by ordinance all sanctions adopted by the United Nations Security Council. In the case of the sanctions promulgated by UNSCR 1267 (1999) and its successor resolutions, the targeted persons and entities are listed in a Government ordinance, published in the Landesgesetzblatt (Liechtenstein Legal Gazette), freezing all assets of the relevant subjects. All natural and legal persons that hold or administer such assets are required to immobilize them and notify the Government (Regierungskanzlei) immediately. This information is passed on to the FIU who, for UNSCR Resolution 1267 purposes, acts as the central authority, being the Chair of the Terrorist

Financing Coordination Group. This task force group further comprises the Public Prosecutor, the ECU, the FMA, the Prime Minister's Office, the Foreign Office, and the Registrar. It is mandated by the Governmental Decision of October 31, 2001 and coordinates the further steps with the Public Prosecutor focusing on the penal aspects.

211. UNSCR 1373: As Liechtenstein has not established a national terrorist list, the implementation of UN Resolution 1373 (2001) relates only to the international cooperation aspect, which triggers a different response. Foreign requests or national lists (such as the EU Regulation based and U.S. OFAC list) are forwarded to the FIU, which passes them on to the FMA. The FMA, as the regulator, informs the financial intermediaries to check their records and if necessary to report according to their DDA obligations, which automatically blocks the assets for a maximum of five days. It is then up to the FIU to decide on the destination of the information: either the case is forwarded to the Public Prosecutor as terrorist-related money laundering or financing, who then can seize the account or assets, or the case is filed within the FIU and no further action is taken.

Freezing Assets under UNSCR 1267 (c. III.1):

212. The sanctions against Al-Qaida and the Taliban under UNSCR 1267 (1999) and its successor resolutions have been implemented by Ordinance of October 10, 2000 "on Measures against Persons and Organizations with Connections to Usama bin Laden, the Al-Qaida group or the Taliban", published in the Landesgesetzblatt of October 13, 2000 (hereafter: the Taliban Ordinance), based on Article 3.1 of the framework Law of May 8, 1991 on Measures pertaining to Economic Transactions with Foreign States.

213. The names of the designated persons and entities are listed in Appendix 2 of this ordinance, which is continuously updated with the additions and amendments issued by the UN Sanctions Committee. The names are also disseminated in electronic format to the professional associations and to all financial intermediaries via the FMA-website.

214. According to the Taliban Ordinance:

- All funds and economic resources belonging to or under control of the designated persons or entities are frozen de jure and without delay (Article 3.1). Although not expressly stated as such, this happens without prior notification of the persons and entities affected by the designation, as the freezing has to be executed immediately;

- It is prohibited to transfer assets or otherwise directly or indirectly make assets and economic resources available to the designated natural and legal persons, groups, and organizations (Article 3.2);

- Persons and institutions holding or managing assets (mostly banks and other financial intermediaries, but not restricted to them) or who have knowledge of economic resources that may be falling under the freezing measure, must report to the Government without delay (Article 4.1 and 2).

215. Any discovery of assets related to listed persons or entities should normally also trigger a disclosure (SAR) to the FIU to comply with the obligations of the DDA. This report is independent of the notification that still must be made separately to the Government.

Freezing Assets under UNSCR 1373 (c. III.2): Freezing Actions Taken by Other Countries (c. III.3):

216. In relation to the freezing of assets of terrorists in the context of UNSCR 1373 (2001), Liechtenstein applies the relevant provisions of the DDA and of the StPO, as explained above. Liechtenstein has not drafted its own terrorist list. If the necessity would arise, the drafting of domestic lists would normally be the responsibility of the Terrorist Financing Coordination Group.

217. Ultimately, the FMA is in charge of the dissemination of such lists, domestic or foreign, notifying all persons and enterprises subjected to the DDA by means of a circular reminding them of their obligations in this respect. In the event of the subjected entities owning or controlling such funds, they are under the obligation to report to the FIU and immediately freeze the assets for a period of five days. The report then follows the process of any other SAR. This procedure has, for instance, been applied with the U.S. OFAC lists and the EU regulations on terrorism-related persons and groups. The FMA brings such lists to the attention of the persons subject to due diligence by way of a circular and calls upon them:

- to verify whether business relationships with the persons or organizations on the list exist;
- to verify whether persons or organizations on the list are beneficial owners of a business relationship;
- to take the measures set out in article 16 DDA upon carrying out the inquiries underArticle 15, paragraph 2 DDA .

Liechtenstein has not established a formal screening procedure for the incoming lists, but in practice this is done by the FIU in consultation with the other participants of the Terrorist Financing Coordination Group.

Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):

218. The freezing obligation according to Article 3.1 of the Taliban Ordinance relates to funds (“Gelder”) and economic resources in possession or under control of the designated persons, groups, and organizations as enumerated in its Annex 2. The term “funds”, as defined in Article 5.b of the Ordinance, covers an exhaustive list of all forms of assets, including claims and derived income, such as interests, dividends or other added values. “Economic resources” are broadly defined in Article 5.d to cover all kinds of values, whether tangible or intangible, mobilia (personal property) or immobilia (real estate).

219. The term "control" in Article 3.1 of the Ordinance is supposed to cover both direct and indirect control, and the term "possession" is said to include both sole ownership and co-ownership. There is, however, no formal text or precedent substantiating this opinion.

Communication to the Financial Sector (c. III.5):

220. UNSCR 1267 and Taliban Ordinance lists and changes are first published in the national newspapers and the Liechtenstein Law Gazette. Moreover, all relevant information is immediately communicated by the FMA to the professional associations for distribution to their members.

221. The FMA publishes all lists relating to the implementation of UNSCR 1267 and UNSCR 1373 on its website www.fma-li.li and sends e-mail messages (FMA Newsletter) in the case of amendments to the lists. The FMA Newsletter currently has about 500 subscribers, including all professional associations.

Guidance to Financial Institutions (c. III.6):

222. The FMA gives guidance to the financial sector through its Newsletter. Punctual advice can also be sought in consultation with the FIU and other involved governmental authorities. The training courses given to the financial industry also address the UN Resolution obligations.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):

223. There is a specific procedure provided for de-listing of persons designated in the context of UNSCR 1267. In its Circular 1/2007 of March 13, 2007, the FMA informed the financial intermediaries of the de-listing procedure, as adopted by UNSCR 1730 of December 19, 2006. All Liechtenstein citizens or residents, including legal persons, who are affected by the freezing measures are informed that they can address a focal point at the UN and the FIU can render assistance. They also have the possibility to address the Liechtenstein Government, who will then examine if their request is founded, and if so, will apply for de-listing. De-listing automatically unfreezes the affected assets.

224. No specific procedure for de-listing or unfreezing is provided in the context of UNSCR 1373. Any resulting SAR freezes the assets for five days, and automatically unfreezes them after five days without intervention of the Public Prosecutor.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c.III.8)

225. In case of confusion or mistaken identity, no specific procedure has been provided for. The affected party has the option to argue its case before the relevant administrative or judicial authorities according to the normal procedures.

Access to frozen funds for expenses and other purposes (c. III.9):

226. According to Article 3.2 and 4 of the Taliban Ordinance, the Government may make an exception on humanitarian grounds and allow access to frozen accounts for certain payments, transfers of such assets, and the release of frozen economic resources in protection of Liechtenstein interests or prevention of hardship. Each request for exceptional authorization is evaluated as to its conformity with the conditions set out in UNSCR 1452 (2002). No such possibility is specifically provided for in the context of UNSCR 1373. When the case is referred to the Public Prosecutor under the suspicion that terrorist-related assets are involved, the normal rules of the seizure procedure apply according to Article 96 to 98 StGB. Any decision on the disposal of the assets is in the hands of the Public Prosecutor, the Investigating Judge, or the Court.

Review of Freezing Decisions (c. III.10):

227. For UNSCR 1267 cases, no special procedure has been elaborated for challenging the freezing measure before a court. Any challenge needs to follow the de-listing procedure. There is the general possibility to appeal against administrative government decisions with the Administrative Court (Verwaltungsgerichtshof), but that would only be applicable in case the Government refuses to submit an unfreezing application to the UN focal point (see SR.III.7).

228. In the UNSCR 1373 context, the common criminal procedure applies. If assets are blocked on the basis of Article 16.1 DDA, no challenge is possible until receipt of a seizure order according to Article 97a StPO (within five days). Once the assets are seized, the affected person or entity has recourse to the Court of Appeal (Article 97a.6 StPO).

Freezing, Seizing, and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11)

229. The relevant provisions of the StPO and the StGB also apply to the seizure and confiscation of terrorist-related assets. Article 20b StGB and Article 97a StPO expressly impose seizure and confiscation of assets belonging to or at the disposal of terrorist groups and those used for financing of terrorism. Assets belonging to an individual terrorist would then be covered by Article 20b.1 StGB, imposing confiscation of all means of financing terrorism.

Protection of Rights of Third Parties (c. III.12):

230. In confiscation matters, third party protection is covered by Article 20c.1.1 StGB, expressly excluding from forfeiture those assets that are subject to legal claims from persons who were not involved in the criminal activity or criminal/terrorist organization. Outside the penal law context, there are no special and appropriate provisions on protection of bona fide third parties caught in the administrative freezing process, except the arrangement for innocent third parties who may make use of the laborious procedure of de-listing in case of administrative freezing (UNSCR 1730 – see III.7).

Enforcing the Obligations under SR.III (c. III.13):

Monitoring:

231. Article 6 of the Law of May 8, 1991 on Measures pertaining to Economic Transactions with Foreign States stipulates that the authorities and persons mandated to implement this Act may demand any information necessary to monitor compliance with the Act and related Ordinances. For this purpose, they may demand that business documents be submitted and may conduct on-site verification of the persons required to provide the information. The FMA uses this power by regularly verifying compliance in the framework of due diligence inspections.

Sanctions:

232. Pursuant to Article 6 of the Taliban-Ordinance, Article 4 and 5 of the Law of May 8, 1991 on Measures pertaining to Economic Transactions with Foreign States apply.

233. Article 4 of the Law of May 8, 1991 on Measures pertaining to Economic Transactions with Foreign States stipulates that:

- The Court can impose a fine of up to CHF1 million on anyone who violates the provisions enacted by the Government on the basis of this Act, insofar as the StGB provisions do not apply.
- In case of negligence, the maximum penalty is reduced by half.
- If the violations are committed in the business operations of a legal person, a general partnership, a limited partnership, or a sole proprietorship, 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 person, the company, or the sole proprietorship for the fines and costs.

234. Article 5 of the 1991 Law imposes confiscation of the object and the instrumentalities of the offense, and refers also to the Articles 26 StGB (confiscation of instrumentalities and products) and 353 to 357 StPO for the applicable procedure. It is not immediately clear, however, how seizure and confiscation is applied in practice in case of violation of the Taliban Ordinance.

235. As for compliance monitoring and sanctions in respect of the measures to be taken in relation with other terrorism-related assets, the relevant DDA and StPO provisions apply.

Statistics

236. The following relevant statistics were submitted:

- Since 2001, a total of five reports have been submitted to the Government pursuant to the Taliban Ordinance under the 1267 regime (2001: 2 reports, 2002: 1 report, 2003: 1 report, 2006: 1 report). Approximately CHF205,200 was blocked ex lege. At the end of 2006, approximately CHF115,000 was officially released for humanitarian reasons after

consultations with the Sanctions Committee. So approximately CHF90,200 is presently still blocked.

- Moreover, two reports were submitted in 2006 pursuant to Article 16 DDA, which were triggered by list hits (EU list) under UNSCR 1373. In these cases, no assets were located in Liechtenstein.

Suspicious Activity reports (received by FIU)	2003	2004	2005	2006
Suspicious Activity report DDA 16/1 (terrorism)	0	0	1	2

Analysis of Effectiveness

UNSCR 1267

237. The appropriate measures to freeze assets under UNSCR 1267 are in place in Liechtenstein, covering all aspects to make compliance effective and adapted in the special context of an extraordinary procedure. In this respect, only some details remain to be addressed:

- In the absence of a clear statement in the law, it is not clear if the control over the targeted assets also comprises indirect control;

- Similarly, it is unclear if possession implies also partial or joint ownership; and

- No review process is provided for challenging the freezing measures.

UNSCR 1373

238. The Liechtenstein response to the requirements of SR.III outside the scope of UNSCR 1267 is a pragmatic one. In the absence of a national terrorist list, measures have not been introduced in Liechtenstein to freeze and manage assets suspected to belong to other suspected terrorists and terrorist-related entities according to an appropriate and specific procedure. Foreign lists are addressed by applying the common preventive and repressive process. The following are some of the features already in place, though they are not organized in Liechtenstein into a specific and formal legal framework:

- The FIU, in its role as central authority for Liechtenstein in the context of UNSCR 1267 and as chair of the Terrorist Financing Coordination Group, decides on and screens the incoming lists. Suspected assets are subject to automatic freezing (although only for a limited period of five days) and reported to the FIU;

- There is an effective communication system to the financial institutions and other relevant entities and guidance is provided by the FMA;

- Beyond this phase, the normal criminal procedure applies. No specific administrative measures exist that deal with the other requirements of an appropriate freezing regime, adapted to the implementation of UNSCR 1373.

239. In respect of the seizure and confiscation of terrorist related assets in general, reference is made to the comments made earlier for Recommendation 3.

2.4.2 Recommendations and Comments

- Liechtenstein needs to review its response to UNSCR 1373 and address the requirements accompanying a balanced freezing system outside the context of UNSCR 1267. It should elaborate a procedure covering all specific aspects required by the standards of the exceptional freezing regime in respect of suspected terrorism-related assets.

- As for the Taliban Ordinance procedure, it should be clarified that the measures also target assets indirectly controlled and partially or jointly possessed by the designated persons. Review of the measure or other appellate possibilities should also be provided for, when challenged by the affected persons or in case of confusion of identity.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• No specific comprehensive procedures in place to respond adequately to the requirements of an effective freezing regime outside the context of UNSCR 1267; • Notion of "control" and "possession" not clearly defined; challenge of freezing measure not specifically provided for in the Taliban Ordinance.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

Establishment of FIU as National Center (c. 26.1):

240. The Liechtenstein Financial Intelligence Unit (FIU) is the central authority for receiving and analyzing suspicious activity reports concerning money laundering and terrorist financing. It is an administrative type FIU accountable to the government (Minister of Finance) and operational since March 1, 2001. Administratively, it is a department within the Ministry of Finance, but it is functionally independent in operational matters, without any interference from other authorities. Originally, the Ordinance of February 22, 2001 on the Financial Intelligence Unit served as its legal basis, before being substituted by the Law of 14 March 2002 on the Financial Intelligence Unit, in force since May 8, 2002 (hereafter: the FIU Act).

241. Basically, the FIU serves as an interface between the Liechtenstein (financial) entities subjected to the Due Diligence obligations and the law enforcement authorities (in the first place the Public Prosecutor). Its main task is to analyze the disclosed information in order to establish if there are indications of money laundering, related predicate offenses, organized crime, and terrorist financing. All information indicative of such criminal activity is then forwarded to the Public Prosecutor.

242. The FIU Act delineates the functions and competencies of the FIU in processing the disclosures of suspicious activity it receives in the context of the fight against money laundering and terrorist financing (Article 3 and 5 FIU Act, Article 16.1 DDA). The FIU Act was not amended in the same manner as the DDA to include terrorism financing in the domain of the FIU.

243. The receipt of such disclosures is the trigger for the FIU to exercise its analytical and other authorities. According to Article 16.1 DDA its primary sources are:

- the persons and entities subjected to the DDA obligations;
- the domestic administrative authorities; and
- the Financial Market Authority.

244. The threshold for reporting is the suspicion that a relation with money laundering, a predicate offense, organized crime, or terrorist financing exists. It is not a condition for the reporting entities to identify the probable predicate offense before making a disclosure, as this is the task of the FIU. More specifically, according to Article 4 and 5 of the FIU Act, the FIU is tasked to:

- receive the suspicious activity reports (SARs) submitted by the subjected (financial) entities pursuant to Articles 16 (mandatory reporting) and 17 (discretionary reporting of attempted occasional transactions) of the DDA;
- analyze and evaluate these disclosures in the light of possible indications of money laundering, related offenses, organized crime, and terrorism financing;
- report to the Public Prosecutor all confirmed suspicions and elements related to the relevant criminal activities resulting from the analysis;
- create and manage a database of relevant information collected in the course of its activities; and
- draft situation and strategy reports for the government evaluating the money laundering and terrorist financing threat (risk analysis).

245. On receipt of a SAR accompanied by an automatic freezing measure, the FIU has the authority to give clearance for transactions to be carried out from the frozen account or to lift the freezing measure altogether before the maximum five days period has elapsed (Article 16.4 DDA).

Guidelines to Financial Institutions on Reporting SAR (c. 26.2):

246. Besides organizing training for financial intermediaries on matters pertaining to their reporting obligation, including how to report, the FIU also punctually supports and accompanies them in submitting suspicious activity disclosures through the "de facto" consulting procedure that has been established with the reporting entities before a disclosure is made. Reporting entities have the possibility—and indeed it is customary—to discuss cases and hold evaluation talks with the FIU before making a formal disclosure. The pertinence of the SARs is said to be high mainly because of these preliminary consultations. Although the FIU accepts SARs in any form, it has drafted a reporting form the reporting entities are encouraged to use (Article 23.2 DDO). Some 80 percent of the disclosures are made that way.

Access to Information on Timely Basis by FIU (c. 26.3):

247. In order to carry out its analytical task, the FIU Act has vested the FIU with specific powers that allow it to collect additional information to support and complete its analysis. For that purpose it can:

- request complementary information from the disclosing entity (Article 23.1 DDO);
- have access to information held by domestic authorities (Article 9 FIU Act);
- collect information from law enforcement authorities (Article 5d FIU Act); and
- under certain conditions, exchange information with foreign counterpart FIUs (Article 7 FIU Act).

248. Consequently, the following secondary sources are available:

Online:

- the central register of natural and legal persons (APO);
- the vehicle register;

Interface:

- the reporting entity;
- all other domestic administrative authorities, including the tax authorities;
- the police;

- the Public Prosecutor;

- Counterpart FIUs (normally over the Egmont Secure Web).

249. The access to administrative services in principle also includes the information held by the Registrar. There have never been any problems of access to the public information and the registrations subject to "legitimate interests". The access to deposited information until recently gave rise to controversy based on the argument that this type of information belongs to the depositing trust who retains mastership over the documents. This matter has been settled recently by government ordinance in favor of the relevant authorities including the FIU.

Additional Information from Reporting Parties (c. 26.4):

250. Within the context of the analysis of a disclosure, the FIU has the authority to request additional information directly from the financial intermediaries (Article 23.1 DDO) which are required to oblige. This authority is restricted, however, to the person or entity that has made the disclosure, excluding all other parties subjected to the reporting obligation under the DDA. This weakness is partly mitigated by the practice of the FIU of holding discussions with financial intermediaries possibly leading to the filing of a further related SAR, thereby giving the FIU access to other useful data to complete their analysis.

251. Moreover, the FIU has the possibility of obtaining relevant information from the FMA by means of administrative assistance (Article 9 FIU Act *juncto* Article 36 DDA). According to Article 4.3 of the FIU Act, the collection of information by the FIU is "subject to the legal provisions concerning the preservation of confidentiality". The same condition is repeated in Article 7.2.a of the FIU Act related to international cooperation at FIU level. The general phrasing raises the question as to how far this condition reaches and might be construed as unduly limiting the possibilities of the FIU to gather and exchange information. The authorities stated, however, that this should be understood in the sense that the collection and exchange of information needs to be purpose-bound in the context of the fight against ML and FT. It also refers to the confidentiality obligation resting upon the FIU (Articles 6 and 11 FIU Act) governing outside access to its data.

Dissemination of Information (c. 26.5):

252. If the analysis confirms the suspicion of ML or FT, the FIU must forward its file containing all relevant information to the Office of the Public Prosecutor for further investigation and/or prosecution. The FIU has to come to a reasoned conclusion substantiating and corroborating the suspicion ("erhärten") and giving added value to the original disclosure. The reports are always structured in standard format and comprise the disclosure, the identity, factual information on the business relation, identification of the suspicious transactions and the grounds for assuming they are ML or FT related, with conclusion and recommendation. As the money laundering offense is limited to a series of predicate offenses, the FIU also needs to indicate the probable criminality generating the assets or related to the suspect to establish its authority to

divulge the information for law enforcement purposes. The qualification of the probable predicate criminality does not bind the Public Prosecutor.

253. Once the file is in the hands of the Public Prosecutor the analytical role of the FIU is complete, except for additional information received subsequently, which is automatically forwarded to the Public Prosecutor. The Public Prosecutor can always go back to the FIU for more clarification. It is customary to hold evaluation talks with the Public Prosecutor aiming at improving the quality of reporting.

Operational Independence (c. 26.6):

254. The operational independence of the FIU is not expressly covered by the FIU Act (as it was in the abolished 2001 FIU Ordinance), although its function, competencies, and responsibilities are clearly specified. The parliamentary explanatory memorandum relating to the FIU Act, although not itself having legislative status, makes the intention of the legislator quite clear, however, in that the FIU's functional independence ("gesondert") is reaffirmed and protected as before. There are no reports on any instances of (attempted) interference with the FIU.

Protection of Information Held by FIU (c. 26.7):

255. In accordance with Article 5.1(e) FIU Act, the FIU has created and maintains the necessary IT infrastructure to be able to process and analyze the data received and collected, including personal and financial data. Confidentiality is governed by Articles 10 and 11 FIU Act, prohibiting passing on information to third parties and ensuring that the information is used exclusively to combat ML and FT. Disclosures that did not give cause to a report to the Public Prosecutor's Office keep their confidential status and are filed within the FIU. All requests for access to the FIU-held data based on Article 10 FIU Act (there have been such instances after the 20 day tipping-off prohibition period had elapsed) have been refused on the grounds of protection of "predominating public and private interests" (Article 10) or on Article 11 arguments (mostly the risk of jeopardizing the efficient functioning of the FIU or privacy interests).

256. The FIU also has physical security measures at its disposal, both with respect to its premises and access to the databases. The premises are protected by coded entrance, while the database access is restricted to the head of the FIU and his deputy, the analysts, and the IT specialist. Maintenance of the IT infrastructure is done by a technician of the general administration, who is bound by a specific security protocol.

257. Article 6 FIU Act subordinates cooperation with the other domestic authorities to the condition that it does not interfere with "the discharge of its responsibilities." On the other hand, Article 36.1 DDA goes further and imposes an obligation on the authorities, including the FIU, "to transmit all records" necessary to enforce the DDA, which might be interpreted as an obligation for the FIU to divulge its confidential information at the request of another authority. The principle of the specific provision ("lex specialis") overruling the general provision,

however, gives priority to Article 6 FIU Act over Article 36.1 DDA and preserves the confidentiality of the FIU data.

Publication of Annual Reports (c. 26.8):

258. According to Article 5.1(f) FIU Act, the FIU periodically drafts situation and strategy reports for the attention of the Government. It does so, in a written or oral form, some four or five times a year. Since the start of the FIU in 2001 it has also published annual reports containing current information on FIU activities, statistics, and typologies.

Membership of Egmont Group (c. 26.9):

259. The FIU was admitted in the Egmont Group in 2001 at its plenary meeting in The Hague. It is an active participant, with its Head chairing the Operational Working Group and in that capacity sitting in as a permanent member with the Egmont Committee.

Egmont Principles of Exchange of Information Among FIUs (c. 26.10):

260. According to Article 7 FIU Act, the FIU may exchange information with foreign counterparts. Although it does not require a memorandum of understanding (MOU) for this purpose, it has nevertheless signed MOUs with Belgium, Monaco, Poland, Romania, Chile, Croatia, and Georgia and cooperation agreements with Switzerland and Russia in the spirit of the Egmont Principles of Information Exchange (See also infra on R.40).

Adequacy of Resources to FIU (c. 30.1): Integrity of FIU Authorities (c. 30.2): Training for FIU Staff (c. 30.3):

261. The FIU is an independent administrative office with a separate budget covering the operational expenses (telecommunication, administration, commercial databases, travel, separate post for its own database). The salaries of its staff are paid by the Ministry of Finance. It disposes of its own secured premises and its own IT infrastructure. It currently employs seven staff members: the Head and his deputy (both lawyers), 3 analysts (1 former police, 1 former bank compliance officer, 1 economist), 1 analyst/IT specialist and 1 secretary. The composition of the FIU reflects its multidisciplinary approach. There is also diversity in the nationalities: 3 Liechtenstein, 3 Swiss, and 1 Austrian.

262. The Head of the FIU initially screens the candidate staff in a selection procedure as to their capabilities and probity. The formal hiring procedure is conducted via the Office of Human and Administrative Resources of the Governmental Administration.

263. The FIU organizes internal training sessions for its staff members, both on an ad hoc and a regular basis, with focus on new typologies and debriefing of real cases. The operational analysts have also attended the Swiss Criminal Analysis Course and the Swiss Police Institute in Neuchâtel (Switzerland). Moreover, they participate in exchange programs with foreign FIUs.

Statistics

264. For a good understanding of the statistics it is important to note that one disclosure is counted as one report. One report can relate to more than one transaction. Subsequent complementary reports containing new information are also counted separately. Only when there are several reports referring to the same activity and suspect, are they aggregated and counted as one case (report).

Statistics Suspicious activity reports (received by FIU)	2003	2004	2005	2006
Suspicious activity reports total	**172**	**234**	**193**	**163**
Suspicious activity reports DDA 16/1 or 9/2	143	217	173	129
Suspicious activity reports DDA 16/1 (terrorism)	0	0	1	2
Suspicious activity reports (special ordinances)	1	0	0	1
Suspicious activity reports DDA 17/1 or 9a	28	17	19	29
Suspicious activity reports by sector				
Banks	82	133	105	84
Professional trustees	82	89	74	65
Lawyers	5	9	8	9
Insurers	2	2	1	0
Postal Service	1	1	1	1
Investment undertakings	-	-	-	1
Authorities/FMA	-	-	4	3
Reason/trigger for submission of a suspicious activity report				
Internal compliance	124	123	101	109
Domestic proceedings	14	56	36	14
Mutual legal assistance proceedings	34	55	56	40
Suspicious activity reports forwarded to the prosecution authorities				
Forwarded	123	185	139	113
Not forwarded	49	49	54	50

Analysis of effectiveness

265. The FIU plays a pivotal role in the AML/CFT system. Not only does it perform the functions of a typical intermediary administrative financial intelligence unit, it is also a repository for all relevant data relating to criminal proceeds and terrorism, and as such also fulfils a general intelligence function. It is adequately staffed with qualified personnel and conducts thorough operational analysis of the SAR information it receives. It has established a relationship of trust with the reporting entities and puts a lot of effort into raising the awareness among entities covered by the DDA, mainly in cooperation with the FMA.

266. To be able to perform its tasks in an efficient way, the FIU Act has endowed the unit with specific powers to collect additional information in its search for indications of ML or FT. Its

access to law enforcement and administrative information is comprehensive and adequate. The difficulties in accessing information and documents deposited with the Registrar have very recently been resolved. Its powers to query additional financial information of a confidential nature from the reporting entities is restricted, however, to the disclosing entity itself and does not extend to other entities subject to the DDA that have not disclosed, even in the event that the disclosures would contain references or links to such additional sources. Bearing in mind that strong analytical and "investigative" powers are of the utmost importance for any FIU to deliver a product that is of effective use for the ensuing law enforcement action, this restriction may affect the quality and timeliness of the analysis, and consequently may negatively impact on the efficiency of the FIU.

267. In addition to the practice of the FIU prompting the nonreporting entities to consider filing an SAR, the FIU can request the FMA in special cases to collect that information on its behalf. This indirect approach may be a solution born out of pragmatism and may prima facie seem to be in line with the criteria that allow such indirect access, but it is delaying the analytical process and is not entirely free of challenge as it is not expressly provided for in the law. The FMA intervention is based on Article 9 FIU Act and Article 36 DDA, giving the FIU access to FMA information on the one hand and on the other providing for an exchange of information between the FMA and the FIU. The combined provisions, however, make no reference to the FMA collecting information on behalf of and at the request of the FIU and do not appear to cover such eventuality.

268. Articles 3; 4.3; 5d,f and g; 6 and 7d FIU Act still need to be supplemented to formally bring the terrorism financing aspect within the remit of the FIU and achieve consistency with the relevant provisions of the DDA.

269. In terms of effectiveness, the statistics over the last four years show an interesting picture:

- The number of SARs is broadly stable, with the exception of 2004. The decrease from 2005 can be explained by selective impact of the enhanced practice of the reporting entities of consulting the FIU in an evaluation talk before deciding on filing.

- The proportion of disclosures triggered by an outside source (domestic law enforcement or MLA proceedings) is still quite high: from 30 to 50 percent of the total number. This is not surprising considering that the Liechtenstein financial sector manages money and assets from all over the world. On the other hand, it is also indicative of a largely reactive attitude of the sector.

- The output of cases to the Public Prosecutor is remarkably high and reaches an average of some 70 percent of the incoming SARS. This can be explained partially by the fact that a lot of the disclosures relate to ongoing law enforcement or MLA cases. It is, however, also an indication of high quality reporting and analysis.

270. Overall, the FIU is fulfilling its task in an effective way and produces a high standard of reports, taking into account the restrictions it faces in accessing additional relevant information.

2.5.2 Recommendations and Comments

- In terms of efficiency, while direct access would be preferable, at a minimum the law should expressly provide for indirect access of the FIU, through the FMA, to financial and other relevant information held by the non-disclosing entities subject to the DDA.

- The FIU Act needs to be brought in line with the DDA in respect of its terrorism financing remit.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	• The law does not expressly provide for the FIU to have direct or indirect access to all relevant information held by all entities subject to the DDA (also impacts on effectiveness); • FIU Act not amended to expressly include terrorism financing.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offenses, and for confiscation and freezing (R.27, & 28)

2.6.1 Description and Analysis

271. Law enforcement in ML and FT cases rests in the first place with the national police, specifically the Kommissariat Wirtschaftskriminalität (Economic Crime Unit) which is specialized in investigating financial crimes. As is typical for civil law countries, the public prosecutor is not only responsible for prosecution of offenses, but is also heading and supervising the police investigation. Also involved in the investigation of crimes are the Princely Courts, more specifically in the person of four investigative judges who have the power to impose coercive measures, such as by way of search and arrest warrants. In terms of ML-related investigations and proceedings, most of them are initiated by mutual legal assistance requests and FIU reports.

Legal Framework:

Designation of Authorities ML/FT Investigations (c. 27.1):

272. The Office of the Public Prosecutor (Staatsaanwaltschaft) is ultimately responsible for the investigation and the prosecution of ML and FT offenses in accordance with Article 20 CPC. If the needs of the investigation so require, he can request the investigating judge to order specific coercive actions (warrants), in which case the prosecutor remains in charge of the proceedings, or to take over the investigation in his sole charge (which is always the case when the suspect is

placed under investigative custody). The public prosecutor and the investigating judge conduct the investigations through the National Police, and in particular for ML and FT cases the Economic Crimes Unit, which possesses the expertise necessary for such special investigations. In practice, most ML investigations are triggered by FIU reports (more than two thirds) with the balance from other sources, such as MLA requests and direct police investigations.

Ability to Postpone/Waive Arrest of Suspects or Seizure of Property (c. 27.2):

273. The decision if and when a person is arrested or accounts or assets are seized is the responsibility both of the Office of the Public Prosecutor, which submits an application to the investigating judge, and of the investigating judge, who decides on the applications and, where appropriate, issues the order. There are no specific rules on the timing of such measures. The Public Prosecutor, as head of the investigation, is normally the authority who in such cases decides when and where the police will intervene, and in this he will be guided by the aim of maximum result. Therefore, it is perfectly possible and legal to postpone or waive an arrest or seizure if the efficiency of the investigation so requires, e.g., in order to follow the money trail or identify accomplices. Controlled delivery as such is even specifically provided for in Article 12 of the trilateral cooperation treaty between Liechtenstein, Switzerland, and Austria.

Additional Element - Ability to Use Special Investigative Techniques (c. 27.3) :

274. The following special investigative techniques are allowed for law enforcement purposes:

- Observations;
- Surveillance of telecommunications, including video surveillance and recording of the content (telephone tapping), subject to approval by the President of the Court of Appeal (Article 103 StPO);
- Controlled delivery, mostly in drug trafficking cases;
- Infiltration and undercover actions, such as a controlled sale or purchase of drugs by a law enforcement officer (Article 27 Narcotics Act); and
- The use of informants.

275. Insofar as the basic human rights are respected and the investigation is conducted under judiciary control, an express provision is not specifically required. The techniques are closely monitored by the public prosecutor, who is ultimately responsible for ensuring the full legality of their use. Entrapment is absolutely forbidden and invalidates the whole ensuing procedure (Article 9 StPO). It has been ruled, however, that controlled delivery and undercover operations do not fall under the concept of "entrapment." In practice, the small size of the country and its population inhibit a frequent use of undercover techniques.

276. Mixed investigation teams are provided for in the Police Cooperation Agreement with Austria and Switzerland.

277. The more frequently used special investigation methods are observation and telephone tapping. Seven telephone surveillance measures and seven observation measures, including video surveillance, were carried out in 2006.

Additional Element - Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4):

278. As far as the investigation of white collar criminality is concerned, surveillance of telecommunications is an appropriate investigative tool. The entire telecommunication system, including internet, can be monitored retroactively or on ongoing basis. Currently an amendment to the StPO is being drafted, modeling the special investigative procedures after the new Austrian criminal procedure code.

Additional Element - Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5): see 27.3

Additional Elements - Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6): see 27.3

Ability to Compel Production of and Searches for Documents and Information (c. 28.1):

279. Article 98a StPO specifically provides the legal framework for obtaining evidence from banks and financial institutions in the sense of Article 3.1.a DDA. The court (mostly the investigating judge) can order them:

- to provide detailed information on the identity of persons and business relations, the nature of the relationship, as well as on the beneficial owners and proxies; and

- to supply all related relevant documentation,

Provided this appears necessary in the context of an investigation into money laundering, a predicate offense, or an offense related to organized crime, or if the assumption is justified that the client relationship is used for handling criminal proceeds or fees (Article 20 StPO), or is at the disposal of criminal or terrorist organizations, or within the context of the terrorism financing offense (Article 20b StPO–see on this point the comments on R.3).

280. The obligation to surrender the requested documents or other relevant items or values is enforceable by the investigating judge and any person who refuses is liable to a fine of CHF1,000 or imprisonment of up to six weeks, except if he is the suspect himself or if he is absolved to testify (Article 96.2 StPO). For seizure of documents held by other entities, such as trustees, the procedure according to Article 96 StPO is applied for all items that may be relevant to the investigation (evidence) or subject to confiscation. This is usually preceded by a search warrant.

281. House and personal searches, including premises and vehicles, are conducted according to Article 92 StPO. As a rule, this is based on a search warrant issued by the investigating judge, but can also be performed by the police on their own authority in certain circumstances (Article 94 StPO): an arrest warrant having been issued, a suspect being caught in the act or in possession of objects linked to an offense or with consent of the inhabitant.

Power to Take Witnesses' Statement (c. 28.2):

282. It belongs to the normal execution of the police function to be empowered to take witness statements. If the witness is unwilling to testify, the court can impose coercive measures at the request of the Public Prosecutor (Articles 105-124 StPO). In principle, witnesses are required to testify, subject to a coercive penalty of up to CHF1,000 and, in the event of continued refusal, coercive detention of up to six weeks. Witnesses located in Liechtenstein may, on threat of a fine of up to CHF1,000 in the event of nonappearance, be summoned by the police if they do not comply with the order to appear. False testimony in court is punished by imprisonment of up to three years and perjury with imprisonment of up to five years (Article 288 StPO).

Adequacy of Resources to Law Enforcement and Other AML/CFT Investigative or Prosecutorial Agencies (c. 30.1):

283. Since December 1, 2005, the Liechtenstein Office of the Public Prosecutor consists of six Public Prosecutors. They all carry the general responsibility to prosecute offenses, including cases of money laundering, predicates and terrorism financing, though with none of them specializing in dealing with these offenses. The Office of the Public Prosecutor also employs four persons full-time for its administration. Organizationally, the Public Prosecutor is subordinate to the Government, but acts as an independent magistrate whenever he exercises his functions in the proceedings before the courts.[14] The financial, human, and technical resources are deemed sufficient. There are 14 judges in the Liechtenstein Court of First Instance (Landgericht, Kriminalgericht, and Jugendgericht). This number is considered adequate and there is no significant backlog of pending cases.

284. In the Economic Crimes Unit (ECU) of the Liechtenstein National Police, nine qualified officers deal with financial investigations, with one investigator specialized in cases of terrorist financing. The technical equipment is modern, with adequate hardware and software being available for operational case analysis. The Unit is supported by the forensic specialists of the criminal police. On average, the ECU investigates 100 domestic and 100 mutual legal assistance cases annually, and conducts between 80 and 100 searches. The Unit considers this workload to be manageable.

Integrity of Competent Authorities (c. 30.2):

[14] A Princely Ordinance of May 19, 1914, which has never been abolished, provides in its Article 6 that in case of serious and political offenses, the Public Prosecutor has to consult the government.

285. Over the last six years magistrates from Austria who had already served there as judges or prosecutors have been recruited as Public Prosecutors in Liechtenstein. Of the Liechtenstein citizens trained in Liechtenstein between 2002 and 2005, one person joined the team of Public Prosecutors in December 2005, and the second followed in January 2007. When recruiting new staff members, training and experience in criminal prosecution are important criteria. All Public Prosecutors working in Liechtenstein have a university degree in law and years of practical experience.

286. The ECU of the Liechtenstein National Police, which is responsible for investigating money laundering and terrorist financing, employs specialists recruited either abroad (Germany, Austria) or in Liechtenstein. They have specialized expertise relating to banking, accounting, auditing, trusts, and insurance. Recruits are trained in Liechtenstein and abroad as criminal police investigators for two years. They are screened on their integrity through database and criminal record checks. Recruits from outside Liechtenstein are checked through the foreign authorities.

Training for Competent Authorities (c. 30.3):

287. The Office of the Public Prosecutor meets the challenges of the increased sophistication of criminal behavior with appropriate and continuing training. The prosecutors attend several lectures on legal issues in Liechtenstein each year, and they also participate in international conferences and training courses. The Prosecutor General represents the Liechtenstein Office of the Public Prosecutor in international bodies. The Office of the Public Prosecutor is a member of the International Association of Prosecutors (IAP), the CCPG of the Council of Europe, and regularly takes part in the conferences of these organizations and the regional meetings of prosecution authorities. Liechtenstein is also associated with Eurojust and the European Judicial Network (EJN) as a third State, and its prosecutors attend the training courses offered by these organizations. Prosecutors attend each year the continued education program of the Academy of European Law in Trier. Two prosecutors completed post-graduate studies on the suppression of economic crime between 2003 and 2005 in Lucerne (Executive Master of Economic Crime Investigation, EMECI).

288. The staff members of the ECU attend annual expert training courses in Austria, Germany, Switzerland, and other countries (e.g., Interpol and FBI continued training courses). An annual budget of over CHF20,000 is available for this purpose.

Additional Element (R.30) - Special Training for Judges (c. 30.4):

289. A budget for continued training of judges in all areas is available. They can attend programs, especially in Switzerland, Austria, and also at the Academy of European Law in Trier. One judge of the Court of Justice successfully completed his Executive Master of Economic Crime Investigation post-graduate studies at the Lucerne School of Business in Switzerland. One other judge has been active for many years in the delegation of the MONEYVAL committee at the Council of Europe. The four investigating judges and judges for mutual legal assistance who

primarily deal with money laundering and (occasionally) terrorist financing are grouped together in their own division of the Court of Justice.

Analysis of effectiveness

290. The investigative powers available to the law enforcement authorities are comprehensive enough to enable them to conduct serious investigations in an effective way. Taking into account the workload and the number of cases, the human and material resources are not particularly abundant but they seem adequate to meet the challenge. The assessors appreciated the professionalism the investigating and prosecuting magistrates and police representatives demonstrated during the interviews. Expertise and training opportunities are sufficiently available so the environment and conditions for an efficient law enforcement approach are in place. The statistical figures support the impression of a targeted effort to counter ML and an acceptable level of effectiveness.

291. In terms of effectiveness at prosecutorial level, it is interesting to compare the statistical data from the FIU with those from the Office of the Public Prosecutor.

	Forwarded by FIU	New cases opened by PP (ML + DDA)	Opened as % of forwarded
2003	123	25+14 = 39	(31.7%)
2004	185	34+15 = 49	(26.5%)
2005	139	33 + 2 = 35	(25.2%)
2006	113	36 + 8 = 44	(38.9%)

Even taking into account that a portion of the cases forwarded by the FIU relate to MLA cases that do not warrant the opening of a new file with the Public Prosecutor's office and the fact that some FIU reports may have predominantly an intelligence value that is not immediately exploitable, the percentage of investigations triggered by an FIU report is rather low. One factor may be that the international dimension of the money laundering cases calls for intensive and laborious investigations, so the Public Prosecutor will automatically conduct a selection process in terms of feasibility and cost/benefit ratio. There is also the general tendency to transfer the cases to the predicate offense foreign authority, rather than taking up the prosecution in Liechtenstein. Reference is made once again to the importance of developing their own experience and jurisprudence in stand-alone money laundering prosecutions, and taking the matter more in their own hands, even if in a lot of cases it must be acknowledged that the transfer of prosecution is likely to be an appropriate approach.

2.6.2 Recommendations and Comments

- The Public Prosecutor should endeavor to take on more autonomous money laundering investigations, especially where no foreign proceedings have been instituted.

2.6.3 Compliance with Recommendations 27 & 28.

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**LC**	• No ML convictions as a result of absence of autonomous money laundering prosecutions (impacts on effectiveness).
R.28	**C**	—

2.7 Cross-Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):

292. In 1923 Liechtenstein entered into a custom treaty with Switzerland, based on which most competencies and tasks in relation to Liechtenstein's customs and border controls were delegated to the Swiss authorities and Swiss customs laws made directly applicable in Liechtenstein. While border controls between Liechtenstein and Switzerland have been lifted, controls at the border of Liechtenstein and Austria are being performed through the Swiss authorities. The Swiss border guard act in a double function as customs officers as well as border police and therefore also have limited police powers.

293. Currently, there is no specific system in place in Switzerland (and therefore Liechtenstein) to particularly detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing. While the border guard touches on the requirements set out by SR.IX, its activities are not directly related to the issues of money laundering and terrorist financing, but rather to criminal offenses in general, including money laundering and terrorist financing. According to the Liechtenstein authorities, the Swiss authorities are currently preparing a draft law to set up a system in accordance with SR.IX. The new draft was to be presented to the Swiss parliament in the summer of 2007.

Request Information on Origin and Use of Currency (c. IX.2): Restraint of Currency (c. IX.3):

294. Some relevant functions and powers of the Swiss police and Liechtenstein police have been delegated to the Swiss border guards. Within these delegated powers, border guard officers may stop a person entering Liechtenstein if there is a suspicion of criminal activity. At this point, the border guard is obliged to inform the Liechtenstein police, which will take over the investigation. The border police itself does not have any investigatory powers. The law does not determine what would be considered a "suspicion". The authorities indicated that it was difficult to determine what would be considered suspicious but stated that the mere fact that somebody was transporting cash or bearer negotiable instruments would not be considered suspicious.

Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4):

295. The most recent stop by the border guard took place in March 2007 and related to a person leaving Liechtenstein. In January 2006, a Slovakian citizen who crossed into Liechtenstein with a sum of US$255,000 in cash was stopped. In July 2004 a person with bearer negotiable instruments was stopped. In 2003, a German citizen who crossed into Liechtenstein with EUR250,000 in cash was stopped.

Access of Information to FIU (c. IX.5):

296. The Swiss customs authorities (including the border guard) are not covered by the DDA and therefore would not be required to report suspicious activities to the Liechtenstein FIU. However, once the Liechtenstein police has been informed by the border guard of a stop, it is required to file a suspicious activity report with the FIU in accordance with the DDA. No report based on cross-border transportation of currency or negotiable bearer shares has ever been filed by the Liechtenstein police, as all of the investigations conducted in relation to border stops turned out to be not related to money laundering or terrorist financing.

Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):

297. The Liechtenstein police and the Swiss customs officers hold regular meetings and the Liechtenstein police also maintains an office at the Swiss customs house. This office, however, is not used full time by the Liechtenstein police.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):

298. In 1999, Liechtenstein, Switzerland, and Austria entered into a treaty on cross-border cooperation of security and customs authorities, which deals with cooperation in relation to transmission of information, cross-border investigatory measures, i.e., hot pursuit, the use of joint control, and the possibility to set up observation and investigation groups and conduct joint search operations. The Liechtenstein police also cooperates with foreign authorities based on Article 25.3 of the National Administration Act and through the INTERPOL information exchange.

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):

299. The mere fact that somebody is transporting gold, precious metals, or precious stones is not considered suspicious and therefore would not justify a stop by the customs authorities. In cases where additional circumstances give rise to suspicion, the same process as in the case of stops relating to cash or bearer negotiable instruments applies.

300. As Liechtenstein does not have an international airport or harbor, criterion IX.14 is therefore not applicable.

301. On average, two persons are stopped every year by border controls based on suspicion. However, so far, none of the cases has led to an investigation. In all cases, the stopped individual could provide evidence of the origin of the assets and was therefore allowed to proceed.

2.7.2 Recommendations and Comments

- Liechtenstein should put into place a disclosure or declaration system to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**NC**	• Liechtenstein does not have a disclosure or declaration system in place to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

302. Liechtenstein has adopted and implemented a risk-based approach to AML/CFT, particularly in relation to ongoing due diligence. The perceived level of risk is the main determining factor in deciding on the degree of attention given to the ongoing monitoring of categories of customer or transaction. While the application of KYC measures as described in detail below was confirmed as mandatory in all cases, the depth and scope of implementation measures are also largely risk-based. While a risk-based system has merit in principle, the Liechtenstein approach goes further in some cases than envisaged under the current interpretation of the FATF Recommendations and is therefore difficult to reconcile in terms of direct compliance with a significant number of the specific criteria of the relevant Recommendations, as analyzed in detail in Sections 3 and 4 of this report.

303. A key issue is the perception in Liechtenstein of the meaning of high, normal, and low risk, having regard to the confirmation by the authorities that more than 90 percent of the financial services business in Liechtenstein would be defined as cross-border private banking (or private insurance or asset management services). While not all of this business is inherently risky, much of it would fall within the categories suggested by the FATF methodology as examples of higher-risk business (non-resident customers, private banking, legal persons or arrangements such as trusts that are personal assets-holding vehicles, and companies that have nominee shareholders or shares in bearer form). The assessors found, however, that the financial institutions and relevant DNFBPs in Liechtenstein regarded much of this business as routine and did not see it as, of its nature, constituting risk that should attract higher levels of due diligence on their part. The responses as to what would be regarded as high risk in Liechtenstein consistently referred to a short list of categories that included politically-exposed persons (PEPs) and business from certain geographical regions, particularly in Eastern Europe.

Legal Basis for customer due diligence

304. Among the obligations of its EEA membership, Liechtenstein is required to implement the EU money laundering directives. However, the assessment presented in this report is based on the FATF 40+9 Recommendations, from which the EU directives differ in a number of respects. There are a number of cases where the assessment identified deficiencies in the Liechtenstein system by reference to the FATF Recommendations where the requirement or practice in Liechtenstein could well be acceptable under, in particular, the Second EU Money Laundering Directive. Nonetheless, the assessors do not have the discretion to depart from the criteria of the FATF Recommendations for purposes of this assessment.

305. Customer due diligence (CDD) in Liechtenstein is set out in the Due Diligence Act (DDA) of May 22, 1996, a complete revision of which was enacted on November 26, 2004 and

came into force on February 1, 2005 and sought to transpose both the EC Directive 2001/97/EC and the revised FATF Recommendations. The DDA was last amended in February 2006. The DDA defines the scope, requirements, and supervision of CDD, and provides for enforcement and information sharing. The legal requirements are expanded and specified in the Government's Due Diligence Ordinance (DDO), dated January 11, 2005. The Financial Market Authority (FMA) serves as the prudential supervisory authority for all financial institutions and activities covered, and the supervisor for AML/CFT purposes (Article 23 DDA). It was established by the FMA Act, dated June 18, 2004, and has been operational since January 1, 2005. It is an autonomous institution that reports directly to the Parliament.

306. The scope of application of Liechtenstein's AML/CFT requirements is determined by a dual test set out in the DDA, both elements of which must be satisfied. Thus, the DDA provides for due diligence to be completed by legal and natural persons ("personal scope of application", set out in Article 3 DDA) when conducting professional financial transactions (defined under "substantive scope of application" in Article 4 DDA). As described in Sections 3 and 4 of this report, these are important foundation concepts and provisions in determining whether the scope and coverage of Liechtenstein's AML/CFT requirements are in line with the FATF Recommendations, both for financial institutions and DNFBPs. For that reason, the provisions are described in detail in the following paragraphs.

Personal scope of application of the DDA

307. Pursuant to Article 3, the DDA applies to all financial institutions holding a license:

- banks and finance companies;
- E-Money institutions;
- asset management companies;
- investment undertakings; and
- insurance undertakings

as well as to the Liechtenstein Postal Service AG, exchange offices and branches or establishments of foreign financial institutions. Banks with foreign branches or subsidiaries must assess, limit and monitor risks connected with money laundering, organized crime and terrorism financing on a global basis (Article 13.3 DDA).

308. The financial system is constituted of 16 banks, the Postal Service, 345 investment undertakings, 38 insurance companies, 48 newly-licensed asset management companies, and one exchange office (as at December 2006). The total amount of assets under management is CHF219 billion, two thirds of which being with the three major banks. There is no E-Money institution operating in Liechtenstein and the last finance company wound up in 2003.

Banks and finance companies

309. In accordance with the Banking Act (BA), dated October 21, 1992, as amended, only banks can collect deposits, provide safekeeping services, and issue electronic money; finance companies can, alongside banks, lend money, make off-balance sheet transactions, manage securities issuance, and provide securities services. The BA defines and regulates banking activities and entrusts the FMA with supervisory powers. Banking regulations are stipulated in the Banking Ordinance (BO), dated February 22, 1994, as amended. The BA does not specifically address AML/CFT issues, but requests banks and finance companies to set up internal guidelines governing powers and procedures for approving "transactions fraught with risk", including operational and legal risks (Article 7.a BA), and to conduct sound and proper business operations (Article 19 BA).

310. Domestic banks may perform banking activities or provide investment services in an EEA member state either through branches or directly by virtue of the free movement of services. Conversely, banks and investment firms licensed and supervised in EEA member state may perform, respectively, banking and securities-related activities in Liechtenstein either through a branch or directly by virtue of the free movement of services (Article 30d and 30e BA). A branch of a third-country bank must obtain a license before operating in Liechtenstein.

311. The Postal Service AG provides financial services as an exclusive agent in Liechtenstein for Postfinance (Swiss Post) and provides money value transfers as an exclusive agent in Liechtenstein for Western Union.

Asset management companies

312. Pursuant to Articles 2 and 3 of the Asset Management Act (AMA), which became effective on January 1, 2006, asset management companies[15] provide or arrange to provide on a professional basis asset management services in the form of:

- portfolio management;
- investment advice;
- reception and transmission of orders concerning one or more financial instruments; and
- investment research and financial analysis.

313. Asset management companies (AMC) cannot accept or hold assets that belong to third parties (Article 3. 3 AMA) and cannot hold a trustee, lawyers, patent attorney, or auditor license (Article 6.1.l AMA). The assets managed are in the form of holdings in financial instruments and must be deposited in a bank. At the time of the assessment, AMCs fell within the personal scope

[15] Investment firms within the meaning of Directive 2004/39/EC.

of application criteria of the DDA. However, they were not subject to the DDA in practice because none of their transactions met the substantive scope of application test of the DDA as all AMCs currently have mandates with a limited power of attorney for a client's account (Article 4.3.c DDA).

314. Asset management companies registered and licensed in Liechtenstein may conduct their business in an EEA member state through a branch or in form of cross-border services, or in a third country, after demonstrating to the FMA that they hold, or are not required to hold, a local license (Articles 33 and 36 AMA).

315. Asset management companies registered and licensed in an EEA member state may conduct their business in Liechtenstein through a branch or in the form of cross-border services (Article 34 AMA). Asset management companies or asset managers whose registered office or residence is in a third state, must obtain a license from the FMA before operating in Liechtenstein (Article 37 AMA).

Investment undertakings

316. The Investment Undertakings Act (IUA), dated May 19, 2005, (which entered into force on September 1, 2005) governs entities (funds) which raise assets in the form of units marketed to the public, for the purpose of collective capital investment, and have them managed by a management company for the joint account of the investors. Both the investment undertaking and the management company must hold a license from the FMA. Depositary functions are carried out by a bank holding a domestic license or by a domestic branch of a bank licensed in an EEA member country. Investment undertakings fall within the personal scope of application of the DDA (Article 3.1.b DDA). However, investment undertakings which do not maintain share accounts or distribute shares do not meet the substantive scope of application criteria and, therefore, are not subject to the DDA (Article 4.3.a DDA). Due diligence requirements apply to depositary banks and to management companies.

317. If so authorized by the FMA, a fund management company may in addition manage individual portfolios and other assets, such as pension funds or investment foundations (Article 24.3.a IUA). Subject to FMA authorization, it may delegate some of its responsibilities to third parties, domiciled in Liechtenstein or abroad, but operating under its effective monitoring and oversight (Article 25 IUA).

318. Management companies which are:

- registered and licensed in Liechtenstein may conduct their business in an EEA member state through a branch or under the free movement of services (Article 76 IUA);

- registered and licensed in an EEA member state may conduct their business in Liechtenstein through a branch or under the free movement of services (Article 79 IUA);

- domiciled in a third state must obtain a license from the FMA before operating in Liechtenstein (Article 84 IUA).

319. Units of domestic investment undertakings can be marketed in an EEA member state:

- for transferable securities, providing that they conform to the Directive 85/611 requirements (Article 87 IUA); and

- "for other values or for real estate", providing that they conform to EEA member state's legal and administrative requirements (Article 89 IUA).

320. They can be marketed in a third country providing that they conform to its legal and administrative requirements (Article 90 IUA).

321. Units of an EEA member state investment undertaking can be marketed in Liechtenstein, providing that they conform to the Directive 85/611 requirements. The management company should comply with the IUA and notably appoint a bank as a paying agent in Liechtenstein and a representative who holds a domestic license (Article 91 IUA). An FMA license is required to market units of an EEA investment undertaking which are not in conformity with Directive 85/611, as well as units of a third country investment undertaking (Articles 93 and 94 IUA).

Insurance undertakings

322. Undertakings that provide direct insurance or reinsurance are governed by the Insurance Supervision Act (ISA), dated December 6, 1995, as amended. Insurance undertakings must hold a license for each class of insurance they provide (Article 12 ISA) and are prohibited from conducting non-insurance activities (Article 20 ISA).

323. Insurance undertakings located and licensed in Liechtenstein may conduct business in an EEA member state through an establishment or cross-border services (Article 24.1 ISA); in other states, they must hold a local license (Article 27.a ISA). Insurance undertakings located and licensed in an EEA member state or in Switzerland may engage in direct insurance business in Liechtenstein by way of an establishment or cross-border services (Article 28 ISA and Direct Insurance Agreement between Liechtenstein and Switzerland, 1996). Insurance undertakings with their head office in a third country must obtain a license in Liechtenstein (Article 31 ISA) and operate through a branch managed by a general agent.

324. The personal scope test of the DDA also applies to the Designated Non-Financial Businesses and Professions (DNFBPs), which are discussed in more detail in Section 4.

325. Ultimately, the DDA stipulates that due diligence requirements must be fulfilled by any legal or natural person conducting financial transactions on a professional basis (Article 3.2 DDA). Only tax exempt occupational pension institutions are excluded (Article 3.3 DDA).

Substantive scope of application of the DDA: financial transactions

326. Financial transactions encompass:

- accepting or safekeeping of third parties' assets;
- assisting in the acceptance, investment, or transfer of such assets; and
- establishing, or acting as an organ of, a legal entity on the account of a third party (legal person, company, trust, association, or asset entity) that does not operate commercially in the domiciliary state (holding companies excluded).

327. The following are considered as equivalent to financial transactions:

- transactions exceeding CHF25,000[16] made by dealers in high-value goods and by auctioneers when payments are in cash, whether the transaction is operated in one or in several linked steps; and
- granting of admission to a casino to a visitor.

328. Conversely, in accordance with Article 4.3 DDA, financial institutions' or DNFBPs' other business relations, which do not fall under the above criteria for financial transactions, are not subject to due diligence.

329. Financial transactions, as defined in Article 4 DDA, do not encompass some activities and operations of financial institutions listed in Annex 1 of the FATF AML/CFT Methodology: lending, financial leasing, issuing and managing means of payment, financial guarantees and commitments, and trading. The authorities maintain that banks, and all their activities, fall within the personal scope of application of the DDA and that the substantive scope of application, de facto, does not need to be taken into account. No legal basis was put forward by the authorities to support this position. The FMA informed the assessors that no issue had ever been raised with them regarding this interpretation and the point has never been challenged in court. In meetings with the private sector, the assessors had no indication that any of the banking activities and operations was considered to be beyond the scope of the due diligence requirements.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

330. The DDA provides a detailed framework for:

- the scope of application of CDD, in terms of both persons and transactions concerned;

[16] EUR15,000/USD21,000 (exchange rate as of end of March 2007: CHF1=EUR1.62=USD1.21)

- the specific requirements for identifying the contracting party and the beneficial owner, monitoring transactions, and reporting suspicions;

- the internal organization of persons subject to due diligence and documentation requirements; and

- the supervisory function and enforcement powers, as well as cooperation with domestic and foreign authorities.

331. The DDO elaborates in greater detail on the DDA's requirements.

Legal Framework:

332. Under the 2004 Assessment Methodology for the FATF Recommendations, an asterisk applied to a criterion indicates that the relevant measures must be in law or regulations (as indicated in the appropriate headings throughout Section 3 below). In setting the requirements in Liechtenstein for customer due diligence (CDD), the Due Diligence Act (DDA), as primary legislation, and the related Due Diligence Ordinance (DDO), which as a government ordinance has the status of secondary legislation, qualify as 'law or regulation'. Among the guidance issued by the financial supervisory agency, the Financial Market Authority (FMA), Guideline 2005/1 defines binding risk criteria in direct implementation of Article 13.2 DDA. On that basis, the assessors considered those requirements to qualify as "other enforceable means". Other guidance issued by the FMA, of less relevance to the implementation of the FATF Recommendations, does not enjoy such direct legislative support and has not been accepted as other enforceable means for the purposes of this assessment.

Prohibition of Anonymous Accounts (c. 5.1):

333. In accordance with Article 12.3 and 12.4 DDA, banks and postal institutions are prohibited from maintaining accounts, passbooks or deposits which are anonymous, payable to the bearer, or opened under a fictitious name. Bearer passbooks that existed before the prohibition must be closed "without delay as soon as the corresponding documents are submitted to the bank or postal institution" (Article 40.4 DDA). During interviews, banks told the assessors that bearer passbooks are systematically converted into deposit accounts when clients show up at the counter but that some passbooks have not been presented yet. The authorities informed the assessors that, if a bearer of a passbook requests access to the funds on the account, the outflow of assets is subject to relevant CDD measures in cases where the assets exceed CHF25,000, specifically that the identity of the holder of the passbook must be established at that point and must be required to provide a written statement concerning the identity of the beneficial owner (Article 40.4 DDA). A small number of bearer passbooks remain in circulation: there were 789 bearer passbooks with CHF19 million in deposits as of February 2007, compared with 2,098 passbooks with CHF45 million in deposits in 2002. However, they still convey an inherent risk of being used improperly, as it is not possible to control or monitor the physical transfer of passbooks from one person to another. In the circumstances, the measures described above seem

to address as far as feasible the residual risk of bearer passbooks, when combined with such information as is available to the bank dating from the account-opening stage regarding the identity of the original account holder.

334. Numbered accounts are not proscribed. No specific regulation has been issued with regard to such accounts. In interviews, assessors were told by bankers and external auditors that some customers request numbered accounts in which case a very limited number of staff within the bank know the clients' identity, typically the relationship manager and the compliance officer. Pursuant to the DDA, customer due diligence for numbered accounts is not different from diligence conducted on regular accounts and no additional due diligence is applied or risk recognized in practice by the financial institution arising solely from the fact of a request for the creation of a numbered account. However, in the view of the assessors, such a request from a customer for an additional level of confidentiality on top of banking secrecy should give rise to questions regarding the customer's motivation that should be taken into account by financial institutions in determining the appropriate level of due diligence to apply, as the ongoing monitoring of numbered accounts can be more difficult (and therefore may be less effective in practice) than is the case with nominal accounts. According to the authorities, numbered accounts are estimated to represent significantly less than 10 percent of the total of accounts in Liechtenstein.

When is CDD required (c. 5.2):

335. Pursuant to Articles 5 and 7 DDA, customer due diligence (CDD) is required when entering into a business relationship. Identification of the contracting party, and where different, the beneficial owner, is based on "documentation with probative value".

336. 5.2.b* In accordance with Article 6 DDA, exceptions to identification requirements of the contracting party and where different, the beneficial owner (Article 8 DDA), concern transactions that do not exceed thresholds:

- spot transactions[17] below CHF25,000[18], whether the transaction is made in a single step or in several steps that obviously appear to be linked;

- remittances or transfers[19] below CHF5,000.

337. For remittance and transfers, the threshold in Liechtenstein, equivalent to EUR3,000/USD4,000, exceeds the limit set by the FATF standard (EUR/USD1,000).

[17] A spot transaction is a cash operation, cash payment of bearer instruments, and cashing of checks settled in cash (Article 1 DDO).
[18] EUR15,000/USD21,000.
[19] Remittance and transfer comprise transfer of assets which are deposited in Liechtenstein to be paid abroad, using various communication or payment systems, unless transactions are made through an existing account or deposit (Article 1 DDO).

338. According to Article 20.3 DDA, the reasons why there is no obligation to identify the beneficial owner must be evident from the due diligence files which are required to be maintained by the financial institution. The authorities consider that, in situations where the identification requirement can be waived under the DDA, the persons subject to due diligence are still required by law to complete a profile and conduct ongoing monitoring of the business relationships.

339. 5.2.c* VII.1 Under FATF Recommendation 5, financial institutions should be required to undertake CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretive Note to SR.VII. This would include collecting and transmitting full originator information for cross-border wire transfers above USD1,000 and, in this context, transfers to Switzerland should be defined as cross-border transfers. In Liechtenstein, according to Article 5 DDA, while financial institutions must identify their contracting party, this requirement is waived for occasional transfers that do not exceed CHF5,000[20] (Article 6.1.b DDA)—significantly in excess of the SR.VII threshold. Article 15.1 DDO requires banks and postal institutions to provide the name, account number and domicile, or the name and an identification number, of the originator of an international wire transfer. However, this falls short of the SR.VII definition of full originator information. A further concern is that wire transfers between Liechtenstein and Switzerland are treated as domestic (in recognition of the monetary union) and, as such, the DDO obligations for international transfers do not apply. Moreover, the requirement to collect customer information may be waived entirely in Liechtenstein if "legitimate reasons" prevent the financial institutions from obtaining customer information. The example given in the DDO of a "legitimate reason" is the case of standing orders, and such reasons must be clarified and documented (Article 15.2 DDO). Issues regarding wire transfers are discussed in more detail in the analysis of SR.VII.

340. 5.2.d* According to Article 6.3 DDA, in case of suspicions of connections with money laundering, predicate offense for money laundering, organized crime, or financing of terrorism, identification diligence must be conducted, without taking into consideration the exceptions listed in the DDA. However, the identification is not required if the person subject to due diligence refrains from entering into a business relationship, but the financial institution may then file an SAR (DDA, Article 17.1).

341. 5.2.e* Identification diligence of the contracting party must be conducted again if doubts about initial data arise during the course of the relationship (Article 9 DDA).

342. To summarize the findings of the assessors for criterion 5.2, CDD is a standard requirement in Liechtenstein when initiating a relationship. Each person subject to due diligence must compile and keep updated a profile in respect of each long-term business relationship. However, the requirements in Liechtenstein for the application of CDD measures in respect of

[20] EUR3,000/USD4,000.

cross-border wire transfers for occasional customers are not in line with the FATF Recommendations in a number of important respects.

Identification measures and verification sources (c. 5.3):

343. Contracting parties and beneficial owners must be identified when entering into a business relationship (Article 5 DDA). Identification requirements apply to contracting parties, without any restriction based on their legal status: entities with limited capacities, which are eligible to act as contracting parties or beneficial owners, are subject to identification (Article 17 DDO). No distinction is made between occasional and permanent relationships, but minimum thresholds are set for occasional transactions (see 5.2).

344. The DDO stipulates that:

- documents with probative value must be original forms or certified copies (Article 3 DDO); and

- copies of these documents must be dated and signed, in order to certify that the original forms or certified copies have been verified (Article 7.2 DDO).

345. According to Article 6 DDO, copies of documents can be certified by:

- a branch or a subsidiary of entities subject to CDD;

- a lawyer, a professional trustee, an auditor, or an asset manager subject to regulation and supervision; or

- a public notary.

346. Such certifications may not be older than twelve months (Article 7 DDO).

347. For natural persons, data that must be collected encompass: last name, first name, date of birth, address and state of residence, and citizenship. A valid official identity paper (passport, identity card or driving license) with a picture is required for natural persons, or, if the contracting party cannot provide such a document, a confirmation of identity from the authority in the country of his domicile (Articles 3 and 4 DDO).

348. In accordance with Article 14 DDA, a customer profile must be compiled for each long-term relationship and must include (Article 21 DDO):

- the (names) of the contracting party, the beneficial owner and authorized parties;

- the economic background and origin of the assets;

- the profession and business activities of the beneficial owner or of the effective founder, if the counterparty is acting as an organ of, or is a legal entity that does not operate in the domiciliary state; and

- the intended use of assets.

349. There is no provision defining how often a profile must be updated. Financial institutions' representatives told the assessors that inconsistencies between customer's transactions and profile would initiate inquiries, which could result in a profile update.

350. Insurance undertakings must also collect identification documents with probative value when making payments to recipients (Article 8 DDO).

351. The large use of domestic and foreign intermediaries for due diligence restricts financial institutions' ability to access original identification documents. They must rely on certification of copies that is essentially provided by the intermediaries themselves. Pursuant to Article 4.2 DDO, when the contracting party cannot present an identification document with probative value, he shall provide a confirmation of identity provided by the authority of the country of residence.

352. Requirements for verification of customer identification data do not extend beyond the identification requirement outlined above which is based on obtaining "documentation with probative value". The authorities consider that using one of the methods of possible verification listed in the Basel Committee's General Guide to Account Opening and Customer identification is sufficient, and no additional verification step is required in Liechtenstein. However, having regard to the largely non-resident client base and the fact that often the Liechtenstein financial institution does not have sight of original documentation, the approach to verification in Liechtenstein is minimalist at best and could not be considered an adequate response to the higher-risk nature of much of the business.

Identification of Legal Persons or Other Arrangements (c. 5.4):

353. Pursuant to Article 21.1 DDO, authorized parties must be named in the client profile. Civil and criminal laws require financial institutions to verify that any person purporting to act on behalf of a legal person is so authorized, but verification of authorized parties' identity is not formally required by the DDA or the DDO.

354. 5.4.b Financial institutions must obtain for legal persons, companies, trusts, other associations, and asset entities the following information (Article 3 DDO): name or firm name, address, domiciliary state, and date of formation.

355. Other documents required under Article 5 DDO are:

- for registered entities, an extract from the Public Register or a written extract from trustworthy, privately-managed registers and databases;

- for deposited entities,[21] documents with probative value which shall be an official certificate issued in Liechtenstein; the statutes, the formation documents or agreement; a certification by the external auditor of the entity's name, address, domiciliary state, and date of formation; an official license to conduct its activities; or a written extract from trustworthy, privately-managed registers and databases.

356. The written extract from databases maintained by the Public Register Authority and from "trustworthy, privately-managed registers and databases" must be obtained by the person subject to due diligence itself (Article 5.1.b.c and 5.2.e DDO).

357. Financial institutions and external auditors have not mentioned to the assessors any difficulty in obtaining and maintaining information and documents required for CDD, notably from intermediaries and service providers.[22]

358. Verification of the identity of parties authorized to act on behalf of a customer is not formally required by the DDA or the DDO. In order to obtain a certification of registration for legal entities, financial institutions are permitted to rely on non-official foreign sources ("trustworthy privately-managed registers and databases" Article 5.b.1.c DDO) or on documents provided by the client himself (in Liechtenstein, the certificate for deposited entities is provided by the customer and financial institutions can only obtain confirmation of their existence from the Public Registry). According to the authorities, in practice the documents would not typically be provided by the client but by his authorized representative, most commonly a Liechtenstein trustee.

Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):

359. Beneficial owners are defined in Article 11 DDO as those persons who ultimately hold the economic rights to the assets. The effective founder of a revocable trust or the person paying the insurance premium are considered as beneficial owners (Article 11 DDO).

360. 5.5.1* Pursuant to Article 7.1 DDA, the persons subject to due diligence must identify the beneficial owner when entering into a business relationship with care that is appropriate to the circumstances. In doing so, they may start from the assumption that the contracting party is identical to the beneficial owner. If, however, doubts arise as to whether this assumption is correct, the person subject to due diligence must require from the contracting party a written statement identifying the beneficial owner. A written statement is also always required from the client pursuant to Article 7.2 DDA in case of:

- spot (occasional) transactions above CHF25,000;

[21] As defined and explained in the section on legal persons and arrangements.

[22] The issue is addressed further under Recommendation 9.

- remittances or transfers above CHF5,000;
- total annual insurance premiums above CHF1,500;
- one-time insurance premium above CHF4,000;
- a business relationship with a natural person is initiated by correspondence; or
- a contracting party that is a legal entity that does not operate commercially in the domiciliary state—a point that is particularly relevant to Liechtenstein foundations and trusts which, as described elsewhere in this report, represent a substantive part of the financial services business provided in Liechtenstein, particularly to non-residents. The Liechtenstein requirements recognize this by excluding this category from the lighter treatment which would otherwise apply under the law in terms of establishing the identity of the beneficial owner.

361. According to Article 9 DDO, doubts regarding the assumption that the contracting party is the beneficial owner can become manifest in case of:

- a person who does not have a sufficiently close relation to the contracting party possesses a power of attorney;
- a financial transaction amount beyond the financial reach of the contracting party; or
- unusual findings resulting from contacts with the contracting party.

362. Financial institutions and external auditors informed the assessors that clients are always requested to certify in the initial identification form whether or not they are the beneficial owner of the assets.

363. 5.5.2.a and 5.5.2.b* Identification of the beneficial owner is required "with care that is appropriate to the circumstances". Due diligence requirements are the same as for a contracting party (Article 10 DDO): the profile, as defined in Article 21 DDO, must include information about the economic background and origin of the assets presented, the profession and business activities of the beneficial owner, or of the effective founder, if the counterparty is, or is acting as an organ of, a legal entity that does not operate in the domiciliary state. However, as noted above, the obligation to obtain beneficial ownership information, without availing of the concession to be able to assume that the contracting party is the beneficial owner, only covers legal entities that are not commercially active in the domiciliary state and does not extend to commercially-active companies.

364. For entities having no specific beneficiary, such as discretionary trusts or foundations, the contracting party must provide in a written statement the name of the effective founder, the persons authorized to instruct the contracting party or its organs, the persons or circle of persons eligible as beneficiaries and any curator, protector, or other appointed person (Article 10.4

DDO). There are no specific provisions regarding any additional risk-based measures to be taken to verify identification of beneficial owners of companies with bearer shares and nominee shareholders.

365. The definition of "beneficial owner" pursuant to Article 11 DDO is not in line with the definition in the FATF Recommendations, as it only covers persons holding the economic rights to the legal entity's assets and does not extend to persons holding control rights or interests, such as protectors/curators, nominee directors, or other persons with control over the mind and management of a legal entity. Article 10.4 requires identification of such persons but only with regard to legal entities that have no, or only a class of, designated beneficial owner.

366. To summarize for criterion 5.5, under Article 7.1 DDA, identification of the beneficial owner must take place when entering into a business relationship with care that is appropriate to the circumstances. In general, financial institutions are entitled to assume that the contracting party is the beneficial owner, and only when doubts arise as to whether this assumption is correct, the contracting party must provide a written statement identifying the beneficial owner. The DDA lists the cases in which this power of assumption cannot be applied such that direct identification of the beneficial owner is mandatory, encompassing a mixed set of criteria based on transaction amounts and types of business relationships. Most significant, given the volume and importance of such business relationships in Liechtenstein, is the requirement that persons subject to due diligence must identify the beneficial owners of a legal entity that does not operate commercially in the domiciliary state, including trusts and foundations. However, the obligation does not extend to persons holding control rights or interests. Overall, therefore, these provisions fall short of the criterion which requires financial institutions to identify in every case the natural person who is the ultimate beneficial owner. The position of the authorities is that the beneficial owner is always identified and, during the on-site visit, the assessors did not encounter situations where identification of the beneficial owner was not being conducted in practice by financial institutions, though it was not possible for the assessors to determine the depth and quality of this work.

367. In respect of the identification information provided by the contracting party, there is no explicit requirement for verification. In practice, some measures of verification may take place based on the requirement to determine the economic background and origin of the assets. This falls short of the criteria that call for an understanding of the ownership and control structure of the customer and a determination of the natural person that exercises the ultimate effective ownership or control over the customer. In discussions with financial institutions and external auditors, assessors understood that when the beneficial owner is identified in practice, the extent to which ownership is determined is not always clear. The authorities maintain that the information provided by the "contracting party"—often a trustee or other intermediary, in Liechtenstein or abroad—provides an element of verification of the identity of the beneficial owner. They also point to the requirement in FMA Guideline 2005/1 for financial institutions to have access to the information needed to carry out enquiries in the event of doubts or suspicions in the context of Article 15 DDA. Having regard to the higher-risk nature of most of the financial sector business in Liechtenstein, however, it is critically important that sufficient verification

takes place to ensure that the natural person who is the ultimate beneficial owner had been determined. The current range of measures in Liechtenstein, though of value in themselves, are not sufficiently direct or comprehensive to fully respond to the underlying risks.

Information on Purpose and Nature of Business Relationship (c. 5.6):

368. The data required to be collected when establishing a customer profile (which is mandatory when entering into a long-term relationship) include the economic background, origin, and intended use of assets (Article 21 DDO).

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):

369. 5.7* Article 13 DDA requires entities to carry out a risk-based monitoring of their long-term business relationship.

370. 5.7.1 Pursuant to Article 14 DDA, long term relationship profiles must be established. Profile requirements are listed in Article 21 DDO:

- names of the contracting party, the beneficial owner and the authorized parties;
- origin and sources of the assets;
- profession and business activities of the beneficial owner or of the effective founder, if the client is a legal entity or an organ of a legal entity that does not operate commercially in the domiciliary state; and
- intended use of assets.

371. Information related to the assets and the activities of the beneficial owner or the effective founder shall depend upon the risk assessment of the business relationship (Article 21.2 DDO).

372. 5.7.2 Long term relationship profiles must be updated regularly (Article 14 DDA), higher-risk criteria must be established and such risks must be limited and monitored (Article 13.2 DDA). Reidentification of the contracting party or the beneficial owner is required if:

- doubts about initial data arise during the course of the relationship (Article 9 DDA); or
- in the case of an insurance policy, the insurance holder is replaced by another holder (Article 13.1 DDO).

373. Article 14 of the DDA requires financial institutions to establish and maintain a client profile which is the major tool they use for transaction and customer monitoring, as circumstances or transactions which deviate from the profile require simple inquiries to be conducted (Article 15 DDA). The profile contains information related to the contracting party, the beneficial owner, and authorized parties, as well as the economic background, origin and intended use of assets and the profession and business activities of the beneficial owner or the

effective founder of a legal entity. This profile is based on information collected during the customer and beneficial owner identification process.

Risk – Enhanced Due Diligence for Higher Risk Customers (c. 5.8):

374. Pursuant to Article 13.2 DDA, persons subject to due diligence must establish higher-risk criteria and define how these risks are to be limited and monitored. The FMA has issued "certain binding risk criteria" in its Guideline on Monitoring of Business Relationships 2005/1. Criteria listed in the Guideline refer to large cash transactions, politically-exposed persons (PEPs), and to 32 indicators of money laundering. Entities subject to due diligence should not limit their investigations to this non-exhaustive list of indicators, but make use also of their own criteria when monitoring business relationships (Paragraph I, Annex to Guideline 2005/1). If transactions or circumstances meet one of the risk criteria, simple inquiries must be conducted (Article 15.1 DDA), in order to ensure that operations are plausible and understandable (Article 22.1 DDA).

375. In discussions with financial institutions, the assessors were told that customer profile and transaction monitoring was critical for detecting unusual operations and initiating further investigations. Higher-risk areas defined by banks may include also country of residence, type of business, or source of funding. Some of the largest banks met by the assessors have defined criteria in customer acceptance policies.

376. None of the examples of high-risk categories defined in the FATF Methodology under Recommendation 5.8 is included in the Guideline criteria and indicators, although they are extremely relevant in Liechtenstein's financial sector, notably for non-resident customers and personal asset-holding vehicles. For high-risk categories, there is no explicit definition or requirement in the DDA or the DDO for enhanced due diligence. The primary obligation is to conduct simple inquiries when circumstances or transactions either deviate from the profile or meet a high-risk criterion. Therefore, defining, limiting, and monitoring the higher risks is left to a significant extent to the discretion of the financial institutions. As noted already, the risk-based approach as developed in Liechtenstein has merit and it is appropriate to call for financial institutions to take responsibility for developing the detail of their due diligence measures and applying them on a risk-sensitive basis. However, in order to comply with the FATF Recommendations, it is also necessary that there is a clear legal requirement for enhanced due diligence for higher-risk categories of customers and that financial institutions are left with no room for doubt as to the general categories of business that, at a minimum, should be subject to such enhanced due diligence. If such parameters were clearly in place in the legal framework in Liechtenstein, it would provide a much stronger and clearer foundation for the implementation of proportionate and effective risk-based measures.

Risk – Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):

377. Laws or regulations do not define any simplified or reduced CDD measures, but Articles 6 and 8 DDA set out exceptions to identification requirements of the contracting party and the beneficial owner:

- total annual insurance premiums less than CHF1,500;[23]
- one-time insurance premiums less than CHF4,000;[24]
- specific clients or client transactions, such as a legal entity quoted on a stock exchange, or escrow accounts for rental or capital deposits, or rental deposits for properties located in an EEA member state or in Switzerland;
- when payment for an insurance contract is made through an account of the same customer that is opened in an EEA member country or in Switzerland; and
- clients previously identified by third parties within the same group or enterprise, and clients previously identified for other financial transactions by a person subject to due diligence who accepts an insurance application; copies of the original documents for identification must be collected and filed by the insurance undertaking.

378. However, while simplified or reduced measures may be appropriate for a number of the categories listed above, the provisions in Liechtenstein are not consistent with FATF criterion 5.9 which does not provide any basis for countries to waive CDD measures totally in such cases. The authorities point out that the exception in the DDA is only for identification requirements, and even then the name of the contracting party and the reason for the exception must be evident from the due diligence file (and is potentially subject to audit). Importantly, no exemption is available in relation to ongoing due diligence which is still legally required in all cases. However, it is difficult to accept that, in practice, significant due diligence is carried out by financial institutions for categories of customer or transaction that, according to the DDA, are exempted from identification.

Risk – Simplification / Reduction of CDD Measures relating to nonresidents (c. 5.10):

379. There are no such measures for nonresidents.

Risk – Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/FT or other high risk scenarios exist (c. 5.11):

380. CDD must always be conducted in case of suspicions of money laundering, predicate offense of money laundering, organized crime, or terrorist financing, except where the person

[23] EUR900/USD1,200.
[24] EUR2,500/USD3,300.

subject to due diligence refrains from entering into a business relationship (Article 6.3 DDA). In such cases, financial institutions may file a SAR (Article 17.1 DDA)

Risk-Based Application of CDD to be Consistent with Guidelines (c. 5.12):

381. Pursuant to Article 13.2 DDA, persons subject to due diligence must define higher-risk criteria for their business relationships. The FMA has defined "certain binding risk criteria" in the Guideline 2005/1. As indicated in the annex to the Guideline, entities subject to due diligence should not limit their investigations to this non-exhaustive list of indicators, but make use also of their own criteria when monitoring business relationships.

Timing of Verification of Identity – general rule (c. 5.13) :

382. In accordance with Articles 5 and 7 DDA, the identification of the contracting party and the beneficial owner, when different from the contracting party, should be obtained when entering into a business relationship. According to Article 16.1 DDO, all information and documents must be available in full and in due form at the inception of the business relationship.

Timing of Verification of Identity – treatment of exceptional circumstances (c.5.14 & 5.14.1):

383. On "an exceptional basis", necessary information and documents can be provided within 30 days after the relationship began if the person subject to due diligence ensures that no outflow of assets will occur in the meantime (Article 16 DDO).

Failure to Complete CDD before commencing the Business Relationship (c. 5.15):

384. Identification of the contracting party and, where different from the contracting party, the beneficial owner must be conducted when entering into a business relationship (Articles 5 and 7 DDA), with the exception of the 30 days grace period possible under Article 16.1 DDO.

385. CDD must always be conducted in case of suspicions of money laundering, predicate offense of money laundering, organized crime, or terrorist financing, except where the person subject to due diligence refrains from entering into a business relationship (Article 6.3 DDA). Article 17 DDA provides that entities subject to the DDA have the right to file an SAR with the FIU in such circumstances, but there is no requirement for them to do so.

Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

386. When information and documents are not provided within 30 days, the relationship must be discontinued. The outflow of assets must be sufficiently documented and an SAR may be filed if there is a suspicion of a connection with money laundering, predicate offense of money laundering, organized crime or terrorist financing (Article 16.2 DDO; Article 16.1 DDA). Therefore, there is no requirement for financial institutions to consider making a suspicious activity report when unable to complete the CDD, although they may do so.

Existing Customers – CDD Requirements (c. 5.17):

387. The CDD requirements apply to all contracting parties and beneficial owners, including to all business relationships in existence on the date the DDA entered into force. Financial institutions must compile and keep updated a profile for each long-term business relationship (Article 14 DDA). Some financial institutions informed the assessors that they had to close a significant number of accounts in 2003 on the coming into force of the 2002 version of the DDA because the new CDD could not be completed satisfactorily.

Existing Anonymous-account Customers – CDD Requirements (c. 5.18):

388. In accordance with Article 12.4 DDA, banks and postal institutions are prohibited from maintaining accounts, passbooks, or deposits that are anonymous, payable to the bearer, or opened under a fictitious name. Bearer passbooks that existed before the prohibition should have been closed "without delay, as soon as the corresponding documents are submitted to the bank or the postal institution" (Article 40.4 DDA). During interviews, banks told the assessors that bearer passbooks are systematically converted into deposit accounts when clients show up at the counter and that some passbooks have not been presented yet.

Analysis of effectiveness

389. Customer identification requirements apply to clients when initiating a relationship and data must be updated and completed when necessary. These data are consolidated into individual customer profiles that financial institutions must establish and maintain to monitor customers and transactions. Financial institutions informed the assessors that customer profiles were an essential tool for transaction monitoring. In addition, some of the largest banks have defined customer acceptance policies.

390. Under the Liechtenstein approach, defining, limiting, and monitoring the higher-risk categories, as well as related enhanced due diligence, is left to a significant extent to the discretion of the financial institutions. The limited number of high-risk categories clearly defined in legal terms by the FMA does not include some of the most relevant risks in Liechtenstein (e.g., non-resident accounts, accounts opened through an intermediary, entities with bearer shares, and trusts and foundations).

391. In interviews with financial institutions, assessors were not made aware of any current difficulties in practice in obtaining or maintaining identification data. However, some counterparts informed the assessors that they had to close a number of accounts when the DDA was brought into force in 2002 as they were unable to complete CDD on all of the existing accounts. One of the issues that needed to be addressed at that time related to bearer passbooks. Banks confirmed that they convert bearer passbooks into deposit accounts, applying CDD requirements, once the holders of the passbooks come forward. The assessors were also informed that, where customers request numbered accounts, Liechtenstein banks apply the standard CDD measures.

392. Requirements for verification of customer identification data do not extend beyond the identification requirement based on obtaining "documentation with probative value". No additional verification step is required in Liechtenstein and there is no guidance that refers, for example, to the use by financial institutions as appropriate of any of the verification methods listed in the Basel Committee's General Guide to Account Opening and Customer identification. Financial institutions in Liechtenstein depend particularly on domestic and foreign intermediaries to bring in customers and convey to them identification information. Access to original identification documents for non-resident clients is limited for financial institutions in Lichtenstein that rely on certified copies that are largely provided by the intermediaries themselves. There is no general requirement that third parties who conduct the due diligence be based in countries that adequately apply the FATF Recommendations. With regard to clients, additional risks may come from the reliability of information provided by non-official foreign sources ("trustworthy privately-managed registers and databases") or the client himself (e.g., information on deposited entities, in relation to which financial institutions do not have access to the records held in the Public Registry), or from the structure of legal entities (e.g., companies with bearer shares and nominee shareholders or trusts).

393. Some exceptions for client and beneficial owner identification exist and verification of authorized parties' identity is not formally required by the DDA or the DDO. Financial institutions and external auditors informed the assessors that, at the inception of a business relationship, contracting parties are always requested in practice to identify beneficial owners. However, under the DDA, financial institutions may start from the assumption that the contracting party is the beneficial owner, with the important exception of trusts and foundations. Beneficial owner identification must be verified with the profile that provides the economic background and origin of the assets, but identification obligations do not expressly include persons holding control rights or interests, nor the natural person who is the ultimate beneficial owner. This falls short of the criterion that calls for an understanding of the ownership and control structure of the customer and a determination in all cases of the natural person that exercises the ultimate effective control. The assessors were not in a position to assess the depth and quality of the due diligence actually conducted for the identification of beneficial owners.

394. In summary, there is a need for the authorities to define more clearly and broadly the minimum set of activities to be treated as higher risks. Entities subject to due diligence should continue to be encouraged to define their own high-risk categories of business, which should at a minimum include all of the relevant categories defined by the authorities. There is also a need to define and require the implementation of enhanced due diligence measures. While the FMA has issued binding risk criteria, they do not unequivocally define any risk categories of customers or business relationships other than PEPs and enhanced due diligence is limited in the first instance to conducting "simple inquiries". Defining, limiting, and monitoring the higher risks is left largely to the discretion of the financial institutions and there is currently no definition of, or formal requirement for enhanced due diligence.

Foreign PEPs – Requirement to Identify (c. 6.1):

395. Politically-exposed persons (PEPS) are not addressed in primary legislation in Liechtenstein but are defined in the Due Diligence Ordinance (Article 1(c) DDO) as:

> "1. persons holding prominent public positions abroad: heads of State and heads of government; high-level politicians; high-level officials in administrative bodies, the courts, the military, and political parties; the highest decision-makers in State-owned enterprises; and
> 2. enterprises and persons who are recognizably close to the persons listed in point 1 for family, personal, or business reasons."

The definition does not include domestic PEPs.

396. The definition of PEPs as contained in the DDO does not depart materially from the scope of the definition in Recommendation 6, although the wording differs somewhat in that Recommendation 6 provides that "business relationships with family members or close associates" pose a risk, whereas the DDO refers to "enterprises and persons who are recognizably close" to PEPs.

397. In addition to the provisions set out above, the DDO contains a requirement for persons subject to due diligence to issue internal instructions on how to meet the obligations of the DDA and DDO, including the issuance of a business policy concerning politically-exposed persons and the use of a risk management system to determine whether or not a client is a politically-exposed person (Article 27. 2.i DDO). Article 19 DDO provides that, if the persons subject to due diligence do not use computerized systems as an aid in the assessment of business relationships, they shall ensure that other appropriate risk management systems are used to identify PEPs.

398. The authorities informed the assessors that financial institutions in Liechtenstein are aware of the reputational risk associated with PEPs and that the use of electronic systems to identify PEPs is the norm. This was confirmed during meetings with representatives of the financial institutions, all of which identified PEPs as one of the (few) high-risk categories of customer to which they applied enhanced due diligence in practice. Most of the financial institutions interviewed confirmed that they relied principally on well-known commercial databases as their information source, although at least one indicated that internet searches are also routinely conducted to supplement the information available from the database.

Foreign PEPs – Risk Management (c. 6.2; 6.2.1):

399. In setting out management responsibilities, Article 33.1.a DDO (original German version) provides that at least one member of the senior management shall decide on whether or not a business relationship with politically-exposed persons should be initiated in a specific case and decide on the continuation of such business relationships on an annual basis. The requirements do not address cases in which an existing client turns out to be or becomes a PEP.

Foreign PEPs – Requirement to Determine Source of Wealth and Funds (c. 6.3):

400. There are no specific requirements for entities subject to the DDA to establish the source of wealth and funds of customers and beneficial owners identified as PEPs. The general obligations under the DDA and DDO apply. Article 14 DDA provides for a general obligation to compile and keep an updated customer profile and Article 21 DDO provides that a profile has to be kept, establishing a client's economic background, the origin of the assets presented, and the profession and business activities of the beneficial owner.

Foreign PEPs – Ongoing Monitoring (c. 6.4):

401. Business conducted with PEPs is subject to the overall risk-based provisions of the legislation and ordinance. There are no explicit requirements in Liechtenstein for enhanced due diligence for high-risk customers, including in the case of PEPs. The applicable requirements apply to customers in general and allow for discretion in applying risk-based measures. Article 13.2 DDA authorizes the FMA to issue binding risk criteria for the monitoring of business relationships in a guideline, which it did in the form of FMA Guideline 2005/1. The Guideline's risk criteria include in paragraph 3(b) "business relationships with politically-exposed persons" (cross-referred to Article 1.c DDO). However, the guideline does not clarify the measures entities covered by the DDA have to take to adequately address this risk other than those provided for in Article 13.1 DDA, which requires entities subject to due diligence to monitor their expected long-term business relationships in a way adequate to the risks involved. The DDA does not provide for specific due diligence requirements in relation to PEPs, beyond carrying out simple inquiries when circumstances or transactions meet a risk criterion. Under Article 27.2.i DDO, the persons subject to due diligence must define a business policy for PEPs and a risk management system to determine whether or not a client is a PEP, but they have the discretion to put in place procedures they consider appropriate. Guidance has been issued by the FMA that requests the due diligence auditors to assess the risk monitoring systems in place. Assessors found a high level of awareness with regard to risks related to PEPs, and all financial institutions interviewed during the assessment confirmed that, in practice, they treat foreign PEPs as higher risk and apply due diligence that they consider appropriate to the risks.

Domestic PEPs – Requirements (Additional Element c. 6.5):

402. Under Liechtenstein law, the definition of PEPs does not include domestic PEPs.

Domestic PEPs - Ratification of the Merida Convention (Additional Element c. 6.6):

403. The authorities informed the assessors that, in December 2003, Liechtenstein signed the United Nations Convention against Corruption and that preparatory work for its ratification and full implementation is under way.

Analysis relating to PEPs

404. Based on past media reports and on the responses provided by some financial institutions interviewed in the course of the on-site visit, foreign PEP-related business is relevant in an assessment of Liechtenstein. The current requirements are not sufficient to fully meet the criteria of Recommendation 6. To a large extent, the CDD requirements for business relationships with PEPs are not sufficiently explicit but are covered by the risk-based approach adopted by Liechtenstein. Given the risks that have emerged for Liechtenstein in the past, an explicit requirement for enhanced due diligence is warranted in order to address more directly the risk associated with PEPs. As noted, the implementation of current requirements by financial institutions seems to be strong. All financial institutions interviewed confirmed that they regard it as mandatory to apply risk-control measures to foreign PEPs, in compliance with their internal AML/CFT procedures, and implement them in practice.

Cross Border Correspondent Accounts and Similar Relationships – introduction

405. Article 10 DDA provides that the Liechtenstein Government may by ordinance issue more stringent due diligence obligations than for customers in general for banks and postal institutions that carry out correspondent banking services for foreign banks and postal institutions. The relevant measures were issued in the DDO.

406. Financial institutions informed the assessors that correspondent banking services provided by Liechtenstein banks are limited. Only a few banks provide such services at a material level, the currency involved is Swiss Francs (CHF accounts), and the service is provided mainly to banks in neighboring jurisdictions.

Requirement to Obtain Information on Respondent Institution (c. 7.1) :

407. Pursuant to Article 14 DDO, banks and postal institutions must obtain sufficient information on respondent institutions to obtain complete clarity on the main areas of business and the locations of their respondent institutions, as well as on how they are regulated and supervised. There is no explicit requirement to determine whether the respondent has been the subject of a money laundering or terrorist financing investigation or regulatory action.

Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):

408. Pursuant to Article 14 DDO, banks and postal institutions must satisfy themselves that the respondent bank has taken adequate and efficient measures to prevent money laundering, organized crime, and the financing of terrorism.

Approval of Establishing Correspondent Relationships (c. 7.3):

409. A member of senior management must approve the initiation of correspondent banking relationships (Article 33.1 DDO – original German version).

Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):

410. Article 14.d DDO requires banks and postal institutions to document in the due diligence files the information obtained and the arrangements made pursuant to the implementation of the above mentioned measures, including obtained documents or records. However, the provision does not refer expressly to documenting the respective AML/CFT responsibilities of each institution.

Payable-Through Accounts (c. 7.5):

411. Article 14 DDO requires banks and postal institutions to pay special attention to the risk that a correspondent account might, under certain circumstances, be used directly by a third party for its own transactions ("payable-through accounts"). There is no specific requirement to ensure that, if such cases arise, the customer (respondent financial institution) has performed all the normal CDD requirements of Recommendation 5 and is able to provide relevant customer identification data upon request. In discussions with representatives of the financial institutions in Liechtenstein, the assessors were not provided with any indication of significant use in the Liechtenstein context of payable-through accounts. However, information was provided by banks that a small number of select customers in relation to funds business are granted direct access to correspondent accounts by means of limited power of attorney to allow them to place stock market orders outside Liechtenstein banking hours.

Analysis of correspondent accounts

412. The coverage of the DDA requirement for enhanced due diligence regarding the provision of correspondent banking services does not extend to all financial institutions. Despite its limited application to banks and postal institutions, it is likely in the case of Liechtenstein that all relevant institutions are covered. The assessors had no indication that, for example, securities businesses in Liechtenstein offer, or are in a position to offer, any services analogous to correspondent services to other financial services providers and the authorities indicated that there was no scope for such services to be offered from Liechtenstein.

Misuse of New Technology for ML/FT (c. 8.1):

413. There is no specific requirement in Liechtenstein to address the risk of misuse of new technologies in the financial services area from an AML/CFT perspective (including, for example, in relation to internet banking). The E-Money Act regulating the activities of e-money institutions includes some provisions that contribute to limiting risks associated with the use of new technologies, by restricting, for example, the value of e-money instruments to a maximum of CHF3,000 (Article 10.1 E-Money Act). Pursuant to Article 9g of the E-Money Act, relevant provisions of the BA are applicable to providers of e-money services, including the application by the FMA of fit and proper criteria. The authorities also referred to the enactment of the E-Signature Act which contributes to providing a secure basis for the conduct of electronic business. In the absence of any specific measures to address more broadly the risks of new technology, the overall requirement set out in Article 13.2 DDA applies, requiring persons

subject to due diligence to establish criteria indicating higher risks and to issue internal instructions on how such risks are to be limited and monitored.

414. Financial institutions informed the assessors that only limited (and in some cases no) services are available over the internet or through the use of new technologies. The assessors did not encounter any case where it was possible to open a business relationship with a Liechtenstein financial institution over the internet. Some banks allow existing customers to conduct limited transactions via internet, while others allow only balance enquiries or access to non-account specific information. However, even if not material at the direct customer level, technology is key for many of the customer-related financial operations of Liechtenstein financial institutions. Technology is particularly important in supporting the area of business conducted with or through intermediaries and in financial market transactions. The general provisions for higher risks should be applied by financial institutions which, pursuant to Article 13.2 DDA, should classify such activities as higher risks and define procedures to limit and monitor them. While there was no indication that there are particular vulnerabilities in the current systems, financial institutions should nonetheless be under a more explicit requirement to address the risks involved.

Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):

415. According to Article 3.2 DDO, the identification data and proof of identity requirements for establishing a business relationship by way of correspondence are similar to those for personal contact, except that identification documentation can be either the original or a notarized copy and the information must be confirmed by signature or by a secure electronic signature of a representative of the legal person, in accordance with the E-Signature Act (Article 18 DDO). A written statement identifying the beneficial owner is required from the contracting party when the business relationship is initiated with a natural person by correspondence (Article 7.2.b. DDA).

416. Pursuant to Article 18.1 DDA, financial institutions may deal with customers through intermediaries, who, applying Liechtenstein CDD provisions, collect and transfer all information necessary for the creation of the customer profile, and provide certified copies of identification documents with probative value. Intermediaries may also conduct ongoing due diligence, which should not be delegated according to FATF Recommendation 9. Intermediary business is not treated as high-risk, as such, in Liechtenstein, but is subject to the overall risk-based approach.

417. There are no legal or regulatory requirements for other types of non-face to face transactions, and no express requirement, other than Article 3.2 DDO, for financial institutions to have policies and procedures in place to reflect the additional risks involved in non-face to face business relationships or transactions.

Analysis for non-face to face business

418. Financial institutions informed the assessors that some financial business continues to be conducted directly with clients by means of correspondence, in which cases the requirements of

the DDA and DDO apply. In addition, a substantial proportion of the business of Liechtenstein financial institutions—including the creation of new customer relationships—is conducted without ever having face to face contact with the customer. On this basis, the provisions of Recommendation 8 are material to Liechtenstein and need to be reflected more clearly and firmly in the requirements. However, as the risks relate also specifically to the scope of Recommendations 5 and 9, they are analyzed in more depth in those sections.

3.2.2 Recommendations and Comments

R.5

- Strengthen legislative requirements for obtaining beneficial ownership information: for all business relationships financial institutions should be required to (i) always determine the natural person who is the beneficial owner (or owns or controls the customer); and (ii) understand the ownership and control structure of their customer;

- Define in law or regulation a wider range of high-risk customers to include notably non-resident accounts, accounts opened through an intermediary, entities with bearer shares, trusts and foundations, and entities registered in privately managed registers and databases;

- Define and explicitly require by means of law or regulation enhanced due diligence for high-risk customers;

- Strengthen obligation to verify identification data for customers entering into business relationships, beneficial owners and authorized parties;

- Require financial institutions to provide customer information when making domestic wire transfers and align threshold in the DDA and DDO for due diligence on wire transfers with the minimum set out in SR.VII of EUR/USD1,000;

- Bring the current exceptions to identification requirements into line with Recommendation 5.2 which requires at a minimum reduced or simplified measures;

- The FMA should consider classifying business obtained through cross-border third-party intermediaries as requiring a level of enhanced due diligence;

R.6

- Provide an explicit requirement for enhanced due diligence for PEP-related business, preferably in law or regulation, having regard to the level of potential risk in Liechtenstein;

- Require financial institutions to obtain senior management approval to continue the business relationship when an existing customer or beneficial owner is found to be, or subsequently becomes a PEP;

- Provide for an explicit obligation by financial institutions to determine the source of wealth of customers and beneficial owners identified as PEPs;

- Consider applying similar measures to domestic PEPs.

R.7

- Provide an explicit requirement for financial institutions providing correspondent services to determine whether the respondent has been the subject of a money laundering or terrorist financing investigation or regulatory action;

- Amend the current provisions to provide explicitly for the documenting of the respective AML/CFT responsibilities of the respondent and correspondent bank;

- Regarding payable-through transactions, require Liechtenstein financial institutions to obtain a confirmation from the correspondent financial institution that all CDD requirements of Recommendation 5 have been complied with and that the correspondent financial institution is able to provide relevant customer identification data upon request;

- For the sake of completeness, revise the DDA and DDO provisions for correspondent banking relationships and similar relationships to cover all relevant categories of financial institutions;

R.8

- Require financial institutions to take measures to address the risk of misuse of new technologies for ML or FT purposes, particularly for internet banking;

- Require financial institutions to take measures to expressly address the risk of non-face to face business.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• Financial institutions are entitled by the DDA to assume that the contracting party is the beneficial owner in certain cases; definition of beneficial owner does not expressly extend to the natural person holding control rights or interests; no explicit requirement to verify identity of beneficial owners; and not always clear that implementation extends to identifying the natural persons who are the ultimate beneficial owners; • Definition of categories of high-risk customers not adequately specified and enhanced due diligence not explicitly required; • Requirements for verification of identification data are too limited and do not include authorized parties; • No requirement to transmit customer information with domestic wire transfers and threshold for due diligence on wire transfers exceeds FATF threshold; • Categories of exceptions allowed in the application of CDD measures are not consistent with the provisions of Recommendation 5.2;

		• Extensive reliance on non-resident third-party intermediaries which is not classified by the Liechtenstein authorities to be high risk.
R.6	**PC**	• No explicit requirement for enhanced due diligence for PEP-related business; • No specific requirement to obtain senior management approval to continue the business relationship when a customer or a beneficial owner is found to be, or subsequently becomes a PEP; • No explicit requirement to determine the source of wealth for PEP-related business.
R.7	**PC**	• No requirement for respondent and correspondent banks to document their respective AML/CFT responsibilities; • Financial institutions providing correspondent services not required to determine whether the respondent has been the subject of a money laundering or terrorist financing investigation or regulatory action; • Regarding payable-through accounts, financial institutions are not required to ensure that the respondent has performed full CDD or that customer information is available upon request. • The coverage of the current correspondent banking requirements includes banks but not all other categories of financial institutions.
R.8	**PC**	• Limited requirements to address the AML/CFT risk of misuse of new technologies in the financial services area; • No specific requirement for financial institutions to have policies and procedures to reflect the additional risk involved in non-face to face business relationships or transactions beyond overall risk-based approach.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

419. Pursuant to Article 18.1 DDA, persons subject to due diligence may entrust another person subject to due diligence or a mandated third party with:

- the identification of the contracting party and of the beneficial owner;
- the compilation of the profile; and
- the ongoing monitoring of the business relationship, with the exception of reporting suspicious transactions to the FIU.

420. In case of joint services, the person subject to due diligence responsible for the mandate can perform all CDD for all persons subject to due diligence concerned (Article 19.1 and 19.2 DDA). Access to due diligence files must be granted at any time to the other persons subject to due diligence (Article 19.3 DDA).

421. Even in cases where due diligence is performed by a third party, the responsibility for compliance with CDD provisions remains with the persons subject to due diligence (Article 18.2 DDA). However, if the delegate fails to identify, or to repeat the identification of the customer or the beneficial owner, or to conduct special inquiries required in case of suspicions, the responsibility is waived on condition that the delegate has been selected, instructed, and verified "with the degree of care required by the circumstances" (Article 30.2 DDA).

422. The authorities stated that the delegation of CDD as defined in the DDA is an outsourcing or agency relationship and, as such, would not be within the scope of Recommendation 9. In the view of the assessors, however, neither an agency nor an outsourcing relationship exists. Under the provisions of the DDA, the financial institution may not be bound in any way through the third party conducting CDD, who therefore does not act in the capacity of an agent of the financial institution. Furthermore, the financial institution has no direct control over the service provider's CDD performance and the task can therefore not be considered to have been outsourced. Recommendation 9 is therefore applicable.

Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1):

423. Pursuant to Article 24.1 DDO, the delegate must immediately transfer documents and information collected in relation to a contracting party to the person subject to due diligence in Liechtenstein. This includes beneficial ownership information and other profile data. The monitoring of the business relationship can also be delegated (Article 24.2 DDO).

424. Information that the delegate is required to collect generally covers the scope of the requirements of Recommendations 5.3 to 5.6. However, according to FATF Recommendation 9, it is not acceptable to delegate the performance of ongoing due diligence.

Availability of Identification Data from Third Parties (c. 9.2):

425. Documents and information must be transferred immediately to the person subject to due diligence in Liechtenstein by the delegate (Article 24.1.a DDO), a requirement which exceeds the minimum provisions of Recommendation 9. With regard to delegated customer monitoring, documentation must be provided pursuant to Article 24.2 DDO:

- When requested and "within a useful period of time" for simple inquiries;
- At least once a year, for special inquiries; and
- At least once a year, for transactions records and asset balance maintained by the delegate.

Regulation and Supervision of Third Party (applying R. 23, 24 & 29, c. 9.3):

426. Pursuant to Article 18.1.a DDA, a person not domiciled in Liechtenstein may only be appointed as a delegate if he is subject to Directive 91/308/EEC or an equivalent due diligence regulation and supervision and complies "objectively" with DDA requirements. Financial

institutions stated that delegates, such as banks, brokers or other intermediaries, were selected from and operated mainly in Switzerland and in EU countries.

Adequacy of Application of FATF Recommendations (c. 9.4):

427. The Liechtenstein authorities have not determined a list of countries in which an acceptable third party may be based, although financial institutions are informed that FATF and FSRB reports are available on the internet. The authorities informed the assessors that they follow an ad hoc approach with each case treated individually. Such an approach does not appear to provide financial institutions with clear and transparent guidance on the authorities' designation of countries in which acceptable third parties may be based, having regard to the adequacy of application in those countries of the FATF Recommendations.

Ultimate Responsibility for CDD (c. 9.5):

428. According to Article 18.2 DDA, in the event of delegation of due diligence tasks, the responsibility for customer due diligence is not delegated but remains with the person subject to the DDA. However, if the delegate fails to identify, or to repeat the identification of the customer or the beneficial owner, or to conduct necessary special inquiries required in case of suspicions, the person subject to the DDA shall not be punished on condition that the delegate has been selected, instructed, and verified "with the degree of care required by the circumstances" (Article 30.2 DDA).

Analysis of Effectiveness

429. Financial institutions in Liechtenstein rely to a great extent on business introduced by banks or intermediaries abroad, particularly from Switzerland and EU member states. In this regard, a number of business models were described by financial institutions to the assessors. A common approach, for example, is for Swiss or U.K. banks or lawyers to market to their clients products unique to Liechtenstein (deposited foundations) or on which Liechtenstein has a tax-based or other competitive advantage (for example, in private banking or private insurance). A Liechtenstein financial institution may rely on a foreign intermediary to deal with such business. Documents and information must be obtained and prepared in accordance with the DDA and DDO provisions and must be transferred immediately to Liechtenstein. In particular, the foreign intermediary collects and provides to the Liechtenstein financial institution the information necessary for the creation of the customer profile as required under the DDA, as well as providing a certified copy of an identification document with probative value. Financial institutions informed the assessors that these arrangements work well in practice and it is rare at this stage to encounter delays or deficiencies in the work of the intermediaries, as they are well versed in the Liechtenstein requirements. Should any of the information be unclear or missing, the Liechtenstein financial institution will request clarification and, if necessary, the intermediary will revert to its customer to obtain the necessary supplementary information. The customer information supplied does not appear to be particularly detailed but, significantly and as required by the DDA, it includes information on the beneficial owner and the source of funds. Financial

institutions emphasized to the assessors that they check the information provided by the information for plausibility prior to adding it to their customer profile and accepting the customer and his business. They also confirmed that they accept responsibility for the information placed in the customer profile and do not consider this responsibility delegated to the intermediary.

430. A number of factors suggest that business obtained through intermediaries in this manner might warrant an increased level of due diligence, including the typical absence of any face-to-face contact with the customer, the likelihood that the customer is already and will remain a customer of the intermediary, which might prefer to limit for commercial reasons the information access of the Liechtenstein financial institution to customer information. However, cross-border intermediary business is not treated as high-risk, as such, in Liechtenstein, but is subject as is all other financial business to the overall risk-based approach. As noted, the information that the delegate is required to provide is broadly in line with the provisions of Recommendations 5.3 to 5.6. However, according to FATF Recommendation 9, it is not acceptable to delegate to third parties the performance of ongoing due diligence.

3.3.2 Recommendations and Comments

- Amend the DDA to exclude the conduct of ongoing monitoring from the scope of delegation to third parties;
- Remove the protection from punishment set out in Article 30.2 DDA in the event of the failure of an intermediary to meet DDA requirements;
- The authorities should determine countries in which third parties who conduct due diligence on behalf of Liechtenstein financial institutions can be based, by reference to the adequacy of their application of the FATF Recommendations, and require financial institutions to check that such third parties have appropriate preventive measures in place.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**PC**	• Conduct of ongoing monitoring included in the scope of delegation to third parties; • Responsibility in delegating to a third party is unduly limited by the protection from punishment in Article 30.2 DDA; • Ad hoc approach to determining the countries in which an acceptable third party intermediary can be based.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

431. As with many offshore centers, banking secrecy is a fundamental component of Liechtenstein's financial services business, is taken very seriously by financial services

providers, and is used as part of the marketing of the center. Given the importance of the topic, it is addressed in considerable detail in the following sections.

432. The secrecy provisions are defined in identical or similar terms for banks (Article 14 BA), investment undertakings (Article 15 IUA), asset management companies (Article 21 AMA), and insurance undertakings (Article 44 ISA): Board members, management, and staff of financial institutions are obliged to maintain the secrecy of facts that they have been entrusted with or was made available to them, pursuant to their relationship with clients. This obligation is not limited in time to the duration of the employment relationship. Representatives of authorities that in the course of their duties learn of facts subject to banking secrecy are obliged to maintain banking secrecy as official secrecy (Article 14.2 BA, Article 15.2 IUA, Article 39 AMA, and Article 44.2 ISA). However, there are legal provisions in place or relevant jurisprudence that allow confidential customer information to be used and shared, including in the area of AML/CFT, for the following purposes:

Criminal Prosecution

- Communication of information, documents and materials

433. Banks and finance companies may be required through court order to communicate customer information to the authorities to the extent it appears necessary for solving a case of money laundering within the meaning of the Criminal Code, a predicate offense of money laundering, or an offense in connection with organized crime (Article 98a, StPO). This provision applies only to banks and finance companies, which may be requested to provide:

- the name, other data, and the address of the holder of a business relationship;
- information on whether a suspect maintains a business relationship with them, is a beneficial owner or authorized person of such a business relationship, all information necessary to precisely determine this business relationship, and all documents concerning the identity of the holder of the business relationship and his powers of disposal; and
- all documents and other materials concerning the type and scope of the business relationship and associated business processes and other business incidents in a specific past or future time period.

434. Similar provisions apply to FT under Article 20b StGB.

435. In all cases, the information must be required by a court order. The bank or the finance company must maintain secrecy with respect to all facts and processes associated with the court order vis-à-vis its clients and third parties. If the bank or the finance company refuses to provide certain documents or other materials or does not want to divulge certain information, then legal provisions for seizure under Article 96 StPO would apply.

436. Information relevant to AML/CFT that is tax-related would not be made available—as mentioned in Section 2.1.1 fiscal offenses, including serious and organized fiscal fraud, are not predicate offenses for money laundering.[25]

Duty of witness

437. Generally, everybody who is summoned as a witness to court is compelled to testify in relation to the pending case (Article 105 StPO). Lawyers, law agents, auditors, and patent lawyers do not have to provide evidence concerning issues that a client has entrusted to them (Article 107 StPO).

FIU

438. Banking secrecy may indirectly impact on information access by the FIU. The FIU is authorized to request information either directly from a reporting financial institution or through the FMA under certain conditions (as described under Section 2.5.1). However, there is no provision in law that expressly provides for either a direct or indirect right of access of the FIU, through the FMA, to financial and other relevant information held by persons subject to the DDA (other than in the case of the entity filing a SAR).

Supervision

- Authorities' access to information

439. The FMA, which is responsible for supervising DDA implementation (Article 23 DDA), may demand all information and records which are necessary to perform its supervisory functions (Article 28.3 DDA). It has the power to fine anyone who refuses to give information, makes incorrect statements, or withholds significant facts vis-à-vis the FMA, an auditor, auditing company or office subject to special legislation (Article 31 DDA).

- Information-sharing with national authorities

440. The Liechtenstein authorities responsible for combating money laundering, organized crime, and terrorism financing may freely exchange all information and records necessary for the enforcement of the DDA (Article 36 DDA).

[25] However, the authorities informed the assessors that a new Law that came into force on July 27, 2007 allows for mutual legal assistance in cases of value-added tax fraud and smuggling. If the required AML/CFT information is tax related, mutual assistance can be granted, but a reservation of specialty restricts the use of the information to AML/CFT purposes. Liechtenstein has also signed a Mutual Legal Assistance Treaty with the U.S., as well as a savings taxation agreement with the EU.

- Information-sharing with foreign authorities

Administrative assistance

441. Article 37 DDA defines conditions for cooperation with foreign authorities that apply for AML/CFT matters with the exception of activities (banking, insurance, investment, asset management) which are regulated by special regulations. Only the AMA directly authorizes exchange of information with supervisors based in an EU country (Article 53) and with supervisors based in a third country (Article 57), subject to the conclusion of cooperation agreements. The BA (Article 36), the ISA (Article 61), and the IUA (Article 102) contain provisions that prohibit information sharing with foreign supervisors if secrecy obligations stated in these laws are thereby violated. However, the authorities pointed out Superior Court decisions which constitute a consistent jurisprudence that allows information exchange related to customer information, including on beneficial ownership, and, it appears, also applies to information on transactions:

- Decision VBI 2003/33 of the Supreme Administrative Court: the FMA may upon request share information on customer identification with foreign financial supervisors subject to a number of conditions, of which the following are particularly significant:

  - The information has to be used exclusively for supervisory purposes (termed 'specialty'), though this term is considered by the FMA to encompass AML/CFT-relevant information requested under appropriate authority by a foreign supervisory agency;
  - Confidentiality: the receiving authority must be covered by official secrecy provisions; and
  - The FMA must retain control over the subsequent use and any further dissemination of the information (termed 'the long arm' principle).

  The request must also be reasonable and "fishing expeditions" would not be permitted. Where information is shared, it may be used with the FMA's consent for sanctioning purposes and in court proceedings. However, in relation to criminal proceedings, Article 36 BA may not be used to circumnavigate the principle of dual criminality[26] and the mutual legal assistance procedures have to be conformed with.

- Another relevant decision (VBI 2003/1) deals with transfer of information related to a specific securities transaction (contracting partner, beneficial owner, and stock sale date and price); although the request was based on Article 8a BA (securities-related services), and 35 BA (FMA responsibilities), the Court based its decision on Article 36.3a BA which states that the FMA can exchange information with domestic and foreign institutions entrusted by law or public mandate to monitor financial institutions to the extent that they need this information to fulfill their duties; although no explicit reference to transactional information is made in the Court decision, it is considered that all information can be shared;

[26] As noted in the analysis of Recommendation 37, dual criminality is the general and formal rule governing legal assistance procedures according to Article 51.1 RHG.

- A further decision (VBI 2005/003) addresses the issue of exchange of customer-related information; the Court found that beneficial ownership information may be provided to foreign authorities as part of customer-related information.

442. However, it is noted that the Courts' decisions reference the provisions of the BA and not other special legislation for financial institutions or, specifically, the DDA, so that their application to the full range of possible AML/CFT-related requests remain open to some degree of legal question. A proposal to amend the BA is currently before parliament, including the deletion of the current references to banking secrecy acting as a barrier to the sharing of information with foreign supervisors; the assessors are not aware of any proposal to similarly amend the other sectoral laws or the DDA.

443. Insofar as the requested information would include customer data, the Administrative Proceedings Law applies. In this regard, an order must be issued by the FMA requiring the financial institution to provide the requested information. The order may be appealed by the financial institution—and by the customer directly if he elects to do so—to the Superior Court. A concern is that this appeals process could be used to delay and, potentially, undermine the information-sharing procedure.

444. In practice, however, the FMA has made constructive use of the legal precedent created by the available jurisprudence and has established a reputation (confirmed in some instances by the assessors in contacts with supervisors abroad) for a high level of cooperation and efficient implementation in response to information requests received from foreign supervisors, including in the AML/CFT area.

445. The FMA may also request foreign authorities to provide it with information or records in accordance with the purpose of the DDA (Article 37.2 DDA). Information received may only be used to verify compliance with CDD, impose sanctions, or appeal decisions in administrative or judicial proceedings (Article 37.5 DDA).

Legal assistance (see section 6.3)

446. A Court, the Office of the Public Prosecutor, or an authority active in sentence and measure enforcement may order that legal assistance be granted at the request of a foreign authority. Legal assistance covers every kind of support granted for foreign proceedings in criminal matters (Article 50 RHG).

447. Exceptions to granting legal assistance include cases where the act underlying the request is either not sanctioned with legal punishment under Liechtenstein law or not subject to extradition (Article 51 RHG). Acts not subject to extradition include notably violations of

provisions relating exclusively to taxes, monopolies, customs, foreign currencies, or controlled movement of goods, or to foreign trade under Liechtenstein law (Article 15 RHG).[27]

Information sharing between financial institutions

448. There is no specific provision exempting financial institutions from bank secrecy requirements to permit them to share information when establishing or carrying on business relationships with respondent banks and intermediaries. However, Article 10 DDA gives the government power to define due diligence obligations in correspondent banking which it did through Article 14 DDO. Article 11 DDA requires banks and postal institutions to provide sufficient originator information for electronic payment orders. However, they can avoid doing so for a "legitimate reason" (Article 15.2 DDO), for example for standing orders. The assessors found that at least one bank was interpreting "legitimate reason" to include customer requests not to reveal their identity. This issue is discussed in detail under SR.VII. It was evident to the assessors that Liechtenstein financial institutions take the concept of bank secrecy very seriously and take strong measures to protect the anonymity of their clients.

3.4.2 Recommendations and Comments

- To reflect relevant jurisprudence, provide in legislation an explicit exclusion from secrecy provisions to support the provision of all relevant confidential information to foreign competent authorities where necessary for AML/CFT purposes;

- Reconsider the current appeals procedure regarding orders under the Administrative Proceedings Law with a view to improving the efficiency and effectiveness of information-sharing measures;

- Grant criminal prosecution access to customer information from insurance, asset management, or investment undertakings.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• Current practice for information exchange relies on case law to override legislation that includes explicit secrecy provisions restricting information exchange; • Current appeals procedure has potential to undermine efficiency and effectiveness of information exchange; • Provisions granting criminal prosecution access to customer information do not specifically apply to insurance, asset management, or investment undertakings.

[27] Exempt from this rule are requests for legal assistance under Article 1, paragraph 4 of the bilateral Mutual Legal Assistance Treaty with the United States of America, LGBl. 2003 No. 149.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

449. As all of the criteria of Recommendation 10 are asterisked in the assessment Methodology, the relevant provisions need to be in law or regulation. The DDA (primary legislation) and DDO (secondary legislation) qualify in this regard.

Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):

450. In accordance with Article 20.1 DDA, transaction-related records and receipts must be kept by persons subject to the DDA for at least ten years from the conclusion of the transaction or from their preparation. Transaction records are defined in Article 25c to 25e DDO and include:

- records on any inquiries pursuant to Article 15 of the DDA as well as all documents, records, and receipts used in that context;
- records describing transactions and, if applicable, the asset balance; and
- any reports to the FIU pursuant to Article 16.1 of the DDA.

451. The authorities referred also to the obligation under Article 20.1 DDA for persons subject to the DDA to keep and maintain due diligence files for each long-term business relationship. Article 25 DDO requires that the due diligence files shall contain the records and receipts prepared and used for compliance with the DDA and DDO, including records of identification information for customers and beneficial owners and account files, and specifies that one such category is records describing transactions and, if applicable, the asset balance. It is not self-evident that all business correspondence would be captured within this requirement, but the obligation in company law under Article 1063.1 PGR to preserve business papers as well as accounting records for at least ten years is also relevant.

452. Under Article 25.2 DDO, the due diligence files must be prepared and kept in a way ensuring that:

- the stipulated due diligence obligations can be met at all times;
- they enable third parties with sufficient expertise to form a reliable judgment on compliance with the provisions of the DDA and DDO; and
- requests by responsible domestic authorities and courts, auditors, and auditing offices can be fully met within a reasonable period of time.

Record-Keeping for Identification Data (c. 10.2):

453. In accordance with Article 20.1 DDA, client-related records and receipts, as defined in Article 25.4 DDO, are required to be kept by persons subject to the DDA for at least ten years from the end of the business relationship, and not only for the five year minimum required by Recommendation 10. There is no provision in the DDA or DDO for extension of the retention period if requested by a competent authority in specific cases and upon proper authority, but, during criminal procedures, the prosecuting authorities are empowered to confiscate or to seal the documents, according to Article 96 of the StPO, and therefore extend the retention period.

Availability of Records to Competent Authorities (c. 10.3):

454. Article 25.2 DDO requires that requests by responsible domestic authorities and courts, auditors, and auditing offices for access to information contained in due diligence files can be fully met within a reasonable period of time (which time period is not further defined). As noted above, the due diligence files must, in aggregate, contain all customer and transaction records relevant to compliance with the DDA and DDO, and pursuant to Articles 25.3 and 24.1.a DDO, they must be kept exclusively in Liechtenstein.

Analysis – record keeping

455. Financial institutions interviewed by the assessors confirmed that all records are maintained as required by law for at least the time periods specified in the law and in many cases longer. Neither the authorities nor the external auditors identified to the assessors any difficulties in obtaining the records of financial institutions in a timely manner. All records are required to be maintained within Liechtenstein, though not necessarily in a single due diligence file nor in a single location, but they must be capable of being assembled within a reasonable time.

Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c.VII.1):

456. According to Article 5 DDA, financial institutions must identify their contracting party. This requirement is waived for wire transfers, being occasional transfers, that do not exceed CHF5,000[28] (Article 6.1.b DDA). However, under SR.VII.1, customer information should be collected for all transfers above the threshold EUR/USD1,000.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):

457. Article 15.1 DDO requests banks and postal institutions to provide the name, account number, and domicile, or the name and an identification number of the originator of an international wire transfer. This second alternative, as provided for by the DDO, is not one of the options acceptable under SR.VII.

[28] EUR3,000/USD4,000

458. Banks and postal institutions may avoid giving originator information for a "legitimate reason" (Article 15.2 DDO). The example given by the DDO as a legitimate reason is standing orders. Banks are required to clarify and document the reasons for not providing identification information with the wire transfer. In discussions with the assessors, banks identified a customer request as a potential legitimate reason for not transmitting any customer information. In sending wire transfers without originator information, banks are aware that they run the risk of rejection of the transaction by the recipient bank, as sometimes happens. The assessors were not able to establish the frequency with which Liechtenstein banks withhold originator information when transmitting wire transfers.

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):

459. No due diligence is expressly required for domestic wire transfers. Moreover, such domestic transfers are defined in Liechtenstein to include transactions with Switzerland. The assessors had difficulty in clarifying whether the Liechtenstein banks make a distinction in practice between domestic (including Switzerland) and foreign transfers. In either case, under Article 15.2 DDO, banks and postal institutions may refrain from providing customer information for "legitimate" reasons, as described above.

Maintenance of Originator Information (c. VII.4):

460. There is no provision requiring each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information accompanies and is transmitted with the transfer.

Risk-Based Procedures for Transfers not accompanied by Originator Information (c. VII.5):

461. There is no requirement for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete identifier information.

Monitoring of Implementation of SR.VII (c. VII.6)

462. Liechtenstein has not put in place measures to monitor effectively compliance of financial institutions with rules and regulations implementing SR.VII. One option would be for compliance with wire transfer requirements to be subject to checking by FMA-mandated auditors when conducting annual due diligence inspections.

Sanctions (applying c. 17.1-17.4 in R.17, c. VII.9):

463. No specific sanctions have been defined with regard to the provisions implementing SR.VII

Inclusion of Originator Information in Incoming Cross-border Wire Transfers (c.VII.8)

464. Liechtenstein has not required that all incoming cross-border wire transfers (including those below EUR/USD1,000) contain full and accurate originator information.

Inclusion of Originator Information in Outgoing Cross-border Wire Transfers (c. VII.9)

465. Liechtenstein has not required that all outgoing cross-border wire transfers (including those below EUR/USD1,000) contain full and accurate originator information.

466. The authorities indicated to the assessors that EC Regulation 1781/2006 on information on the payer accompanying transfers of funds is likely to be adopted into the EEA Agreement and will be applicable in Liechtenstein in due course to provide an EU-defined solution to improve the current weak system.

3.5.2 Recommendations and Comments

SR.VII

- Provide in law or regulation that, for wire transfers of EUR/USD1,000 or more, banks should be required to obtain and transmit full originator information with the wire transfer;
- Require financial institutions to always include the originator's account number or reference number in cross-border wire transfers;
- Require inclusion of originator information in domestic wire transfers;
- Require that financial institutions treat wire transfers between Liechtenstein and Switzerland as international wire transfers;
- Limit or repeal the DDO "legitimate reason" provision under which banks can currently avoid transmitting customer information with certain wire transfers;
- Require each intermediary financial institution in the payment chain to maintain all the required originator information with the accompanying wire transfer;
- Introduce risk-management requirements for Liechtenstein financial institutions where they are beneficiaries of wire transfers that are not accompanied by full originator information;
- The FMA should introduce additional measures as needed to effectively monitor compliance with the requirements in relation to wire transfers.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**C**	—
SR.VII	**NC**	• Minimum threshold to obtain originator information higher than acceptable under SR.VII.1; • No requirement to always include account number or unique reference number in originator information for cross-border wire transfers; • No provisions for inclusion of originator information for domestic wire transfers; • Financial institutions allowed to opt out of transmitting customer information in certain circumstances; • No requirement for each intermediary financial institution in the payment chain to maintain all the required originator information with the accompanying wire transfer; • No specific requirements for financial institutions when receiving transfers without full originator information; • No specific measures in place to monitor compliance with SR.VII; • No specific sanctions defined with regard to the provisions implementing SR.VII.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Special Attention to Complex, Unusual Large Transactions (c. 11.1):

467. While there are some relevant measures in Liechtenstein to address unusual transactions, they are not sufficient to fully meet the provisions of Recommendation 11. In particular, there is no explicit requirement, as such, in law or regulation for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. Liechtenstein's preventive measures to address money laundering and financing of terrorism risks, including measures to detect unusual transactions, center on the creation and maintenance of a client profile. The profile provides persons subject to the DDA with a basis for distinguishing normal from unusual financial activity of a customer. A profile must be established and updated for each long-term business relationship (Article 14 DDA). There is no requirement for an update cycle or criteria for updating profiles. However, profile information must take into account the risk involved in the business relationship (Article 21.2 DDO). During interviews with financial institutions, assessors were informed that, in general, updates are initiated whenever inconsistencies were detected between a customer's transactions and profile.

468. According to Article 13.1 DDA, monitoring of customers must be conducted on a risk basis:

- Higher-risk criteria must be defined by the persons subject to due diligence;
- binding risk criteria have been issued by the FMA (Article 13.2 DDA and FMA Guideline 2005/1).

469. Paragraph 3 of Guideline 2005/1 lists risk criteria, including large cash transactions (above CHF100,000[29]) and indicators of money laundering, notably transactions that have no apparent financial purpose or that appear financially counterproductive, as well as specific examples of atypical patterns of transactions or turnover of assets (Annex to Guideline 2005/1).

470. Simple inquiries must be conducted when circumstances or transactions deviate from the profile or meet a risk criterion established by the person subject to due diligence (Article 15.1 DDA). Special inquiries are initiated only when suspicions of a connection with an ML/FT offense arise.

471. On the whole, with regard to transaction monitoring, the system in place is defined as a risk-based approach where:

- Binding-risk criteria are defined by the FMA;
- Higher-risk criteria are defined by the persons subject to due diligence;

and where for risk monitoring:

- Simple inquiries must be conducted when circumstances or transactions meet a risk criterion defined by the person subject to due diligence, which should include FMA binding risk criteria;
- Persons subject to due diligence define an internal instruction on limiting and monitoring the higher risks they defined;
- The examination of the adequacy of the established risk criteria is carried out during due diligence inspections.

472. According to FMA Guideline 2005/1, financial institutions are required to detect and analyze transactions which:

- Lie outside the usual business activity or the usual client group of a given financial intermediary (FMA Guideline Annex II.A3);

[29] EUR62,000/USD83,000

- Are above CHF100,000 (FMA Guideline Article 3a); or

- Exhibit characteristics that indicate an illegal purpose, the financial purpose of which is not apparent, or which even appear financially counterproductive (FMA Guideline Annex II.A1).

473. Such a construction does not clearly and explicitly require financial institutions to detect and analyze all complex or large transactions or patterns of transactions that have no apparent or visible economic or lawful purpose. Moreover, the CHF100,000 threshold appears excessively high, and such a fixed amount cannot properly take into account the relative risk of the client business (see Section 3.2.1). In addition, the Annex to FMA Guideline 2005/1 does not include any criteria related to the financing of terrorism.

Examination of Complex & Unusual Transactions (c. 11.2):

474. Two types of inquiries are defined in Article 15 DDA:

- "Simple inquiries" with appropriate effort must be conducted, in order to understand and assess the plausibility of circumstances or transactions which deviate from the profile or meet a risk criterion set by the person subject to the DDA; and

- "Special inquiries" are required to dispel or validate suspicions of money laundering, related predicate offense, organized crime, or terrorism financing in the context of long-term business relationships, circumstances, or transactions.

475. The results of the inquiries must be documented in the due diligence files (Article 15.3 DDA), including documents, records, and receipts (Article 25.1.c DDO). However, while useful, such inquiries would not necessarily target all complex, unusual, or large transactions or patterns of transactions in a manner that could provide assurance that all of the circumstances specified in Recommendation 11 would be covered.

Record-Keeping of Findings of Examination (c. 11.3):

476. Records on inquiries, as well as documents, records, and receipts used in that context must be kept in the due diligence files for at least ten years from the conclusion of the transaction or from their preparation (Article 20.1 DDA).

Analysis – complex and unusual transactions

477. Although the system established by Liechtenstein provides a practical application of a risk-based approach, it does not reflect with sufficient precision the relevant FATF requirements. While the overall approach is mandatory for entities subject to the DDA, the manner of implementation appears to provide excessive discretion in determining high-risk categories. There appears to be an inconsistency in referring on the one hand in the DDA to binding-risk

criteria to be defined in a guideline and inclusion of many of the selected criteria as a list of indicators in an annex to FMA Guideline 2005/1, preceded by the following text:

> "The purpose of the indicators of possible money laundering listed below is to raise awareness among entities subject to due diligence. They apply to expected long-term business relationships as well as to expected short-term business relationships. In themselves, however, the individual indicators do not constitute sufficient grounds for suspicion to trigger the reporting obligation; they are, however, grounds for conducting background inquiries as specified in Article 15 DDA. Above all, however, the list of indicators is not in any way exhaustive and also needs to be continually adapted to changed circumstances and new methods of money laundering. It should be used as an aid and not become the basis of routine actions to the exclusion of basic common sense."

478. In the view of the assessors, full compliance with Recommendation 11 would require firmer requirements and a more explicit reflection of the terminology of its criteria. In response, the authorities pointed out that, where an indicator from the list in the annex to FMA Guideline 2005/1 is met, although it is not automatically necessary to file an SAR, it is required to conduct enquiries into the transaction or activity (at least simple enquiries) pursuant to Article 15 DDA. In so doing, institutions pay additional attention to transactions that are unusual in reference to the client profile. In this way, there is a measure of practical implementation relevant to complex, unusual large transactions, despite the fact that the laws and regulations do not explicitly address some of the measures called for by Recommendation 11.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

479. FMA Guideline 2005/1 provides for binding-risk criteria, some of which are presented only in the form of indicators for money laundering listed in an annex. Indicator A20 refers to large and/or frequent transfers to or from drug-producing countries or from countries listed as noncooperative countries and territories (NCCT)–of which none was still listed by the FATF at the time of the assessment visit.

480. The scope of this requirement, which is limited to drug-producing countries and NCCTs and to large or frequent transfers,[30] falls short of the criteria of Recommendation 21. There is no specific reference in the Liechtenstein requirements to the need for additional measures for countries that do not or insufficiently apply the FATF Recommendations. However, most financial institutions interviewed during the assessment indicated that country of origin was an important risk criterion in their customer acceptance policies and in agreeing to conduct transactions. Each had developed a list of high-risk countries to be avoided or (more commonly) that warranted additional risk mitigation measures and due diligence.

[30] Other than transfers to NCCTs.

481. The FMA indicated that financial institutions are informed that FATF and FSRBs assessment reports are available to assist in identifying countries with weak AML/CFT measures. The FMA website provides the lists of names issued by some countries or international organizations. It is not clear that this is sufficient to meet the criteria of Recommendation 21, which calls for effective measures to be in place to ensure that financial institutions are advised of countries that do not or insufficiently apply the FATF Recommendations (see also Section 3.3.1).

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

482. Large and/or frequent transfers to or from drug-producing countries or from countries listed as NCCTs are an indicator for money laundering in the context of the binding risk criteria set out in the annex to FMA Guideline 2005/1. Simple inquiries must be conducted when circumstances or transactions meet a risk criterion (Article 15.1 DDA) and special inquiries are initiated only when suspicions of a connection with an ML/FT offense arise (Article 15.2 DDA). Records, documents, and receipts of inquiries are to be kept in due diligence files (DDO, Article 25, paragraph 1c).

483. However, there are no specific measures in place to address transactions with persons from countries that do not or inadequately apply the FATF Recommendations and that have no apparent economic or visible lawful purpose. While it is not required expressly that the background and purpose of such transactions should be examined and written findings made available to assist competent authorities (e.g., supervisors, law enforcement agencies, and the FIU) and auditors, Liechtenstein's requirement for the maintenance of due diligence files fulfils a similar purpose and it is accepted that the general CDD requirements are applicable. However, there is no explicit requirement for enhanced due diligence and the scope of the current requirements is limited to drug-producing countries and NCCTs and to large or frequent transfers and only simple inquiries are required in the event that unusual activity is noted.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

484. No legal basis in Liechtenstein for applying counter-measures have been identified to the assessors, although the authorities indicated that they are in a position to apply such counter-measures when appropriate. They have done so in practice in the past, the last occurrence being in 2003.

3.6.2 Recommendations and Comments

R.11

- Provide explicitly that financial institutions be required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.

R.21

- Introduce a specific requirement to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations;

- Introduce effective measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**PC**	• Financial institutions not explicitly required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.
R.21	**PC**	• No explicit requirement to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations; • Limited measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Requirement to Make STRs on ML and FT to FIU (c. 13.1 & IV.1):

485. In accordance with Article 16 DDA, a suspicious activity report (SAR) must be immediately submitted in writing to the FIU if the suspicion arises that a transaction is linked to money laundering, a predicate offense for money laundering, organized crime, or the financing of terrorism:

- as a result of special inquiries that validate the suspicions of money laundering, related in some circumstances or transactions (as defined in Article 15 DDA); or

- if suspicions arise in connection with a short-term business relationship (Article 6.3 DDA).

486. The above requirement is a direct mandatory obligation, with no reliance on any indirect or implicit obligation. While the basic requirement of Article 16 DDA to immediately report suspicions is clear and in line with Recommendation 13, the situation is then potentially undermined by qualifying the requirement with the reference to the need for prior "special inquiries", which in turn under the DDA follow only after "simple inquiries". The authorities explained that this is merely documenting the normal process of establishing the facts prior to

deciding to file an SAR, but it seems unnecessarily cumbersome to include all of these steps in primary legislation as prerequisites for the filing of a report with the FIU.

487. An issue that appears to undermine the effectiveness of the suspicious activity reporting system is the de facto automatic five-day freezing that results on the filing of an SAR. Article 16.4 DDA stipulates that until the judicial authorities intervene with a seizure order within a maximum of five days, counting from the receipt by the FIU of the SAR, the filing entity must refrain from all actions that might obstruct or interfere with any orders pursuant to Article 97a StPO (seizure), unless such actions have been approved in writing by the FIU. With regard to effectiveness, this provision can only have a deterrent effect on the decision by the reporting entities that might keep them from reporting, except if they are very sure that the matter is crime related. It is likely in practice to increase the suspicion threshold as financial institutions seek to avoid the burden of the freezing provision. This may explain to some degree the low volumes but high quality of the SARs and the value the institutions place on having the opportunity to evaluate with the FIU, on a no-names basis, the situation that gave rise to their interim suspicion, before they take a decision on whether or not to file a report, thus sharing the responsibility with the FIU. The authorities consider that the current approach enhances the effectiveness of the system and, if anything, results in more rather than less SARs. They also point out that the FIU is closely involved in consultations with the reporting institution during the five-day period, and can act to release the funds or the judicial authorities can move quickly to secure a seizure order.

STRs Related to Terrorism and its Financing (c. 13.2 & SR.IV):

488. The inclusion of terrorism financing concerns is limited to suspicion which arises of a connection with the financing of terrorism (Article 16.1 DDA). As explained in section 2.2.1 for SR.II, this provision does not cover all of the kinds of conduct that are considered terrorist acts under the standard.

No Reporting Threshold for STRs (c. 13.3):

489. All suspicious transactions or activities must be reported to the FIU pursuant to Article 16 DDA, regardless of the financial amount involved. There is no minimum reporting threshold. In case of suspicions of connections with money laundering, predicate offense, organized crime, or financing of terrorism, customer identification must be conducted on all transactions (Article 6.3 DDA) and suspicions must be reported to the FIU (Article 16.1 DDA). Reporting requirements to the FIU do not specifically apply to attempted occasional transactions. However, persons subject to due diligence may file a SAR if suspicions arise in the course of preparation for entering into a business relationship, even in cases where the business relationship with the client is in the end not established (Article 17.1 DDA).

Making of ML and FT STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

490. Tax-related activity is not a predicate offense in Liechtenstein for ML or FT. In accordance with Article 16.1 DDA, reporting entities must file a SAR with the FIU where

circumstances or transactions arise that point to a predicate offense. The authorities pointed out that there is no exception to this reporting requirement regardless whether a predicate offense could be linked to a tax matter.

Additional Element - Reporting of All Criminal Acts (c. 13.5):

491. SARs are based on suspicions of a connection with money laundering, a predicate offense of money laundering, organized crime, or the financing of terrorism (Article 16.1 DDA), with no specific reference to any other predicate offense.

Analysis of SAR reporting

492. The basis for forming a suspicion is more complicated than appears necessary. Article 15 DDA requires the conducting of simple inquiries in the event of circumstances or transactions that deviate from a customer's expected behavior based in his profile, and then the conducting of special inquiries in the event of suspicions. This article is cross-referenced from Article 16 DDA dealing with the SAR reporting requirement but could be read as conflicting with the obligation to report SARs immediately. It is difficult to identify the value in practice of the distinction between simple and special enquiries and there would appear to be a potential that the double process could delay the submission of SARs to the FIU.

493. Liechtenstein has opted to apply the subjective standard of "suspicion" rather than an objective test based on having reasonable grounds to suspect. The reporting obligation under Article 16 DDA includes the financing of terrorism, but has not been extended to explicitly include funds that are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organizations, in addition to those who finance terrorism.

494. Reporting to the FIU should be mandatory in case of suspicions relating to attempted occasional transactions and whether or not a business relationship is established.

495. There are conflicting indications as to whether the SAR reporting system is operating effectively in Liechtenstein. As discussed under Recommendation 26, the number of SARs reported annually to the FIU appears low by comparison with the size and complexity of the Liechtenstein financial system and its level of dependence on international non-face to face business.

Suspicious Activity Reports (Statistics)

	2003	2004	2005	2006
Received by the FIU				
Suspicious activity reports total	172	234	193	163
Suspicious activity reports DDA 16/1 or 9/2	143	217	173	129
Suspicious activity reports DDA 16/1 (terrorism)	0	0	1	2
Suspicious activity reports (special ordinances)	1	0	0	1
Suspicious activity reports DDA 17/1 or 9a	28	17	19	29

SARs by sector				
Banks	82	133	105	84
Professional trustees	82	89	74	65
Lawyers	5	9	8	9
Insurers	2	2	1	0
Postal Service	1	1	1	1
Investment undertakings	-	-	-	1
Authorities/FMA	-	-	4	3
Reason/trigger for submission of a SAR				
Internal compliance	124	123	101	109
Domestic proceedings	14	56	36	14
Mutual legal assistance proceedings	34	55	56	40
SARs forwarded to the prosecution authorities				
Forwarded	123	185	139	113
Not forwarded	49	49	54	50

496. In terms of the volume of SARs, the recent statistical trend has begun to turn downward. On the other hand, the analysis of Recommendation 26 concludes that the SARs received are of a high quality. An explanatory factor is the practice of the FIU to expand its so-called evaluation talks. These talks allow financial intermediaries to contact the FIU at as early a stage as possible and to receive support when deciding whether to submit SARs. The authorities report that this has led to a significant improvement in the quality of the SARs. It is, however, a practice for which Recommendation 13 does not provide a basis, and it could potentially result in the later submission of SARs to the FIU and to lowering the numbers of reports. If that is the case, it is also difficult to reconcile the practice with the requirements of Article 16, DDA which requires, in the first instance, immediate reporting of suspicions. The issue also has to be balanced with the importance of dialogue between reporting institutions and the FIU in improving the quality of reporting and, thereby, the effectiveness of the system.

Protection for Making STRs (c. 14.1):

497. Pursuant to Article 16.3 DDA, if a person has submitted a SAR to the FIU and the report turns out to have been unjustified, such person shall be free of any liability under civil or criminal law, unless the person was acting willfully in filing a false report (the English translation of this provision is open to alternative interpretations, but the assessors were satisfied that the intention of the German original text was to exclude reporting in bad faith from protection). Under Article 16.3, in order to claim compensation for damages or take any other legal action regarding a SAR filed concerning them, a person would have to demonstrate that the reporting institution or its staff member willfully filed a false report, with the burden of proof resting with the claimant. The law provides broad protection but does not specifically reflect all

of the details of the criteria of Recommendation 14 in that it does not expressly refer to protection for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory, or administrative provision or to protection being available even if the underlying criminal activity was not known precisely and regardless of whether illegal activity actually occurred. Neither does it explicitly provide protection for directors, officers and employees (permanent and temporary) of the reporting entity, referring only to the person subject to obligations of the DDA. The authorities explained that SARs are usually signed by an officer of the reporting institution expressly on its behalf, so the protection of Article 16.3 would be available both to the individual who signed and to the reporting legal entity. However, the provision is not sufficiently wide to protect any other officer or employee of the reporting institution who had some involvement with the report but did not sign it.

Prohibition Against Tipping-Off (c. 14.2):

498. Under Article 16.5 DDA, financial intermediaries may not inform the contracting party, the beneficial owner, or third parties that they have submitted a report to the FIU until an order from the competent prosecution authority arrives, but at most until the conclusion of 20 business days from receipt of the report by the FIU. At the time of the 2002 OFC assessment of Liechtenstein, the tipping off prohibition had a lifespan of just 10 days and a strong recommendation was made by the IMF assessors to remove the time limit completely in line with the FATF Recommendations. Liechtenstein responded by extending the tipping off prohibition to 20 days, so the situation remains clearly noncompliant with the FATF standard. The prohibition on tipping-off is also not explicitly extended to directors, officers and employees (permanent and temporary) of the reporting entity, referring only to the person subject to obligations of the DDA. In response to a separate recommendation of the 2002 OFC Assessment, the authorities criminalized tipping-off, as defined in the DDA, in the course of the 2005 revision of the DDA (Article 30.1(k) DDA).

Additional Element – Confidentiality of Reporting Staff (c. 14.3):

499. Liechtenstein laws, regulations, or any other measures make no reference to ensuring that the names and personal details of staff of financial institutions that make a SAR are kept confidential by the FIU. However, the authorities informed the assessors that when the FIU conducts evaluation talks with the financial intermediaries, the relevant personal data remains with the FIU.

Analysis – protection on reporting SARs

500. While Article 16.3 DDA provides for protection for reporting SARs in good faith, the provision could be drafted with greater clarity, and the protection does not specifically extend to directors, officers, and employees other than those who had a direct role in submitting the SAR. Nonetheless, the assessors acknowledged that the available protection is strongly based and broadly meets criterion 14.1. As regards criterion 14.2, there is no basis in the FATF Recommendations for a time limit on the tipping-off prohibition. This is a significant issue of

noncompliance on which the Liechtenstein authorities already received recommendations from previous IMF and MONEYVAL assessments, which have been only partially implemented. The rating of the assessors is, therefore, a composite based on a strong implementation of one of the two essential criteria and a partial implementation in relation to the second.[31]

Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):

501. Liechtenstein opted not to implement a system of reporting to the FIU of all cash transactions above a fixed threshold. The authorities provided the assessors in writing with relevant background information concerning the decision in 2000 to focus on reporting of suspicious transactions. The Liechtenstein officials involved at that time found that, in the specific case of the Liechtenstein financial centre, a threshold-based reporting system would very probably work ineffectively, due to the fact that most transactions are operated through Switzerland. They concluded that the Liechtenstein financial center had to implement a reporting system equivalent to Switzerland, due to the very close relations and cooperation with the Swiss financial centre. There was a concern at the time that a threshold-based system could possibly obstruct the homogeneous subjective reporting system. After due consideration, therefore, the Parliament decided to enact the current legislation which focuses on the reporting of suspicious transactions.

Additional Elements- Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2) and Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):

502. Liechtenstein opted not to introduce a threshold-based reporting system.

Guidelines for Financial Institutions with respect to SAR and other reporting (c. 25.1)

503. No specific written guidelines, as such, have been issued on reporting to the FIU, in line with the provisions of Recommendation 25. Some relevant material, including examples of typologies, is contained in the annual reports issued by the FIU and in newsletters which were distributed to the reporting entities by the predecessor to the current FIU. The FIU also regularly provides training to the staff of reporting institutions, including on SAR reporting. Reporting entities also take advantage of the opportunity offered by the FIU for pre-submission consultations on possible cases of suspicious transactions, which provides a form of guidance (though not actually guidelines) to assist the reporting entity to decide whether to file a SAR.

Feedback to Financial Institutions with respect to SAR and other reporting (c. 25.2):

504. Feedback is provided by the FIU in several ways:

- FIU annual reports;

[31] The Liechtenstein authorities gave a commitment at the MONEYVAL plenary in September 2007 to address the recommendations for removal of the time limit on tipping off.

- Training courses;
- Bilateral evaluation talks with financial intermediaries;
- FIU briefings on SARs; and
- Feedback letter informing the financial intermediary that filed the SAR whether or not the SAR has been transmitted to the prosecution authorities.

In meetings with the assessors, a number of the reporting entities expressed satisfaction with the nature and level of guidance and feedback they receive from the FIU.

3.7.2 Recommendations and Comments

R.13 and SR.IV

- Extend the SAR reporting requirement to include attempted occasional transactions;
- Extend the SAR requirement to explicitly include funds that are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organizations in addition to those who finance terrorism;
- To enhance effectiveness: remove the provision for automatic freezing of assets on the filing of an SAR; simplify the SAR reporting requirement so as not to have the forming of suspicion made legally conditional on conducting prior simple and special enquiries under Article 15 DDA; and ensure that the pre-clearance system for SARs, as currently applied by the FIU, is not permitted to undermine the effectiveness of the system of SAR reporting.

R.14

- Include provisions extending protection on reporting in good faith to directors, officers and employees;
- Remove the time limit on the prohibition of tipping off.

R.25 re STRs

- To supplement its current efforts, the FIU should develop and circulate written guidelines to assist reporting entities to implement their SAR reporting requirement.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• Attempted occasional transactions are not covered by the SAR reporting requirement; • Funds that are linked or related to, or to be used for terrorism, terrorist

		acts, or by terrorist organizations are not specifically included within the SAR reporting requirement; • Weaknesses in the efficiency and effectiveness of the reporting system (automatic five-day freezing on filing a SAR; statutory requirement for simple and special enquiries prior to deciding to file a SAR; low volume of SARs).
R.14	**PC**	• The tipping-off provision applies only for a maximum of 20 days; • Directors, officers, and employees (permanent and temporary) are not explicitly covered.
R.19	**C**	-
R.25	**LC**	• No written guidelines issued by the FIU regarding SAR reporting
SR.IV	**PC**	• Attempted occasional transactions are not covered by the SAR reporting requirement; • Volume of SAR reporting appears low, although quality is high; • Funds that are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organizations are not specifically included within the SAR reporting requirement.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Establish and Maintain Internal Controls to Prevent ML and FT (c. 15.1, 15.1.1 & 15.1.2):

505. Pursuant to Article 21 DDA, internal organization must be appropriate to the profile of the entity and its business relationships. Internal instructions must be issued by the board of directors or by the management to instruct the staff on diligence required by the DDA and the DDO (Article 27.1 DDO). These instructions include notably procedures for CDD, record retention, suspicious activity reporting, higher risks, PEPs, consultation of the compliance officer, and information of the management (DDO, Article 27.2).

506. Persons subject to due diligence must appoint a contact person with the FMA, as well as compliance and investigating officers (Article 22 DDA):

- the compliance officer acts as a supervisor of the due diligence implementation process; in that capacity, he advises the management on internal organization design, prepares internal instructions, and devises initial and ongoing training of staff (Article 30 DDO);

- the investigating officer conducts inspections in order to review records and assess completion of due diligence requirements, notably with regard to reporting obligations and responses to domestic authorities' information requests (Article 31 DDO).

507. During the on-site visit, assessors met a number of compliance officers, all of whom were members of the financial institutions' management. External auditors confirmed that it was common practice in Liechtenstein for compliance officers to be appointed at management level. In the largest banks, compliance is a group function which maintains staff in departments, branches, and subsidiaries. The investigating officer activity is attached to the internal audit function.

508. According to Article 21.1 DDA, appropriate internal instruments must be provided for inspection and monitoring. The compliance officer acts essentially as an advisor and a supervisor. Inspections are conducted by the investigating officer who must have access to customer and transaction data and other relevant information in order to perform the duties described in Article 31 DDO. The internal audit can obtain, whenever required, information on individual business relationships in all group companies for the purpose of global monitoring of money laundering risks (Article 20.1.a DDO).

Independent Audit of Internal Controls to Prevent ML and FT (c. 15.2):

509. The investigating officer who is a staff member of the internal audit shall ensure implementation of the DDA, the DDO, and internal instructions (Article 31 DDO). For this purpose, he shall conduct internal inspections and review in particular that:

- the necessary records are duly prepared and kept;
- the due diligence obligations are undertaken regularly;
- any reporting obligation has been duly complied with; and
- any requests by responsible domestic authorities with respect to contracting parties, beneficial owners, and authorized parties can be completely fulfilled within an appropriate period of time.

510. Banks informed the assessors that investigating officers are often members of internal audit departments which carry out AML/CFT functions as part of their regular audit programs.

511. For banks, the designation of the head of internal audit must be notified to the FMA (Article 26.1.a BA) and the department reports directly to the board of directors (Article 22.2.c BA). These two provisions provide the internal audit with independence from the management. With regard to competencies, Article 34 DDO states that internal auditors must have an unrestricted right of inspection and access to all files and working papers, and cover all consolidated entities. However, there is no formal requirement ensuring that adequate resources be allocated to the internal audit function.

Ongoing Employee Training on AML/CFT Matters (c. 15.3):

512. Persons subject to CDD must ensure initial and ongoing training of their staff (Article 21.1 DDA). This training covers requirements to prevent and combat money laundering, predicate offenses of money laundering, organized crime, and the financing of terrorism (Article 28 DDO). Reporting entities interviewed during the assessment confirmed that they carry out a range of training, at least annually, for all relevant employees. The larger institutions, in particular, appeared to have quite sophisticated training programs.

Employee Screening Procedures (c. 15.4):

513. There is no specific requirement for screening aimed at ensuring high standards when recruiting employees. However, financial institutions interviewed indicated that they routinely operate screening checks when hiring new employees.

Additional Element – Independence of Compliance Officer (c. 15.5):

514. There is no specific requirement for the independence of the compliance function, but external auditors told the assessors that compliance is a management function which reports directly to the board of directors.

Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):

515. FMA Guideline 2005/1, paragraph 2, states that financial institutions must ensure that the FATF Recommendations apply to associated companies and branches in non-FATF member countries, and that local regulations do not prevent them from applying these Recommendations. These provisions address concerns related to branches and subsidiaries operating in non-FATF member countries only and do not fully meet criterion 22.1.1, which is not restricted to non-FATF members. There is no requirement that, where home and host country AML/CFT requirements differ, branches and subsidiaries abroad apply the higher standards.

Requirement to Inform Home Country Supervisor if Foreign Branches or Subsidiaries are Unable to Implement AML/CFT Measures (c.22.2):

516. According to Article 20.3 DDO, banks must immediately inform the FMA of legal or practical reasons that exclude or obstruct their access to a contracting party's or a beneficial owner's information in certain countries. The provisions, which are restricted to customer information, fall short of the standard which calls for obstacles to observing appropriate AML/CFT measures to be reported to the authorities. The requirements in Liechtenstein applies to banks but does not extend to other financial institutions.

Additional Element – Consistency of CDD Measures at Group Level (c.22.3)

517. Banks with foreign branches or leading an international financial group must assess, limit, and monitor AML/CFT risks at a global level (Article 13.3 DDA). There is no similar provision for other financial institutions.

Analysis of effectiveness

518. The largest banks have been developing an onshore activity, opening branches mainly in Switzerland and Germany and also maintain smaller branches in BVI, Bahrain, and Uruguay, among other jurisdictions. According to the inspection report format defined by the FMA, external auditors must review whether banks with branches abroad and banks that have a financial group with foreign companies apply a global monitoring of money laundering and whether the approach taken is effective. No specific issue has been reported by the auditors. In meeting with the assessors, banks acknowledged difficulties in consolidating customer information globally, due to some extent to the limitations of foreign banking or other professional secrecy laws. Therefore, the level and quality of current implementation needs to be improved. Moreover, as this is a business strategy that a number of Liechtenstein financial institutions plan to develop further, it is important that steps are taken to ensure that effective group-wide compliance with AML/CFT due diligence measures can be achieved and sustained. Some banks said that they decline business when CDD required under Liechtenstein laws and regulations cannot be completed.

Recommendations and Comments

R.15

- Require financial institutions to have in place screening procedures to ensure high standards when hiring employees;

- Require financial institutions to ensure that internal audit function is adequately resourced.

R.22

- Require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF Recommendations in countries which do not or insufficiently apply the FATF Recommendations;

- Where home and host country AML/CFT measures differ, require branches and subsidiaries to apply the higher standard;

- Require financial institutions to inform the FMA of any local laws or regulations preventing them from monitoring AML/CFT risk on a global basis;

- The FMA should take steps to improve implementation of appropriate group-wide AML/CFT measures for Liechtenstein financial institutions.

3.8.2 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**LC**	• No requirement for financial institutions to screen for probity when hiring new employees; • No express requirement for financial institutions to maintain adequately resourced the requisite internal audit function.
R.22	**PC**	• No requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF Recommendations in countries which do not or insufficiently apply the FATF Recommendations; • No requirement that the higher standard be applied when home and host country AML/CFT measures differ; • No requirement for nonbank financial institutions to inform the FMA of any local laws or regulations preventing them from monitoring AML/CFT risk on a global basis; • Indications of weaknesses in and barriers to implementation of effective group-wide AML/CFT measures in Liechtenstein financial institutions.

3.9 Shell banks (R.18)

Description and Analysis

519. Shell banks are defined pursuant to Article 12.1 DDA as banks that do not maintain any physical presence in the domiciliary state and are not part of a group that works in the financial industry, that is adequately monitored in a consolidated way, and that is subject to Directive 91/308/EEC in the version of Directive 2001/97/EC or an equivalent regulation.

Prohibition of Establishment Shell Banks (c. 18.1):

520. Although shell banks are defined in the DDA, there is no explicit prohibition[32] on the establishment of a shell bank in Liechtenstein. The provisions of Article 15.1 BA require that a license be issued by the FMA prior to providing banking services. Preconditions to grant a banking license include, in particular, that the registered office and central administration must be situated in Liechtenstein (Article 18.2 BA) and at least one member of the board of directors and of the general management must be resident in Liechtenstein and have sufficient powers to represent the bank vis-à-vis administrative authorities and courts (Article 25 BA). Article 27e BO stipulates that, when data processing is outsourced to a foreign country, all transactions must be initialed in Liechtenstein, contacts with customers must remain within the exclusive sphere of

[32] Recommendation 18 does not require a legal prohibition against shell banks, though such a provision would represent an effective basis for compliance with the recommendation. In the absence of a direct legal provision, comprehensive licensing requirements can also provide an effective response to deter the establishment of shell banks.

competence of the Liechtenstein bank, and accounting is performed in Liechtenstein. In the absence of explicit licensing requirement for a bank to engage in substantive business activities, the provisions of the BA do not provide full assurance that Liechtenstein could not license a shell bank in the future. However, the FMA informed the assessors that it never has and never will approve the establishment of such a bank.

Prohibition of Correspondent Banking with Shell Banks (c. 18.2):

521. Banks and postal institutions are prohibited from establishing business relationships with shell banks (Article 12.1 DDA). This prohibition would encompass correspondent banking relationships with shell banks.

Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3):

522. Under Article 12.2 DDA, banks and postal institutions may not engage in business relationships with banks or postal institutions that permit shell banks to use their accounts, deposits, or safe deposit boxes.

Recommendations and Comments

- Include as a prerequisite for licensing that banks must engage in substantive business activities in Liechtenstein or, alternatively, the authorities could opt to explicitly prohibit shell banks.

3.9.1 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**LC**	• Licensing requirements do not provide sufficient safeguards to exclude the possibility of establishing a shell bank in Liechtenstein.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R. 17, 23, 25 & 29)

3.10.1 Description and Analysis

523. The Financial Market Authority (FMA) is governed by the FMA Act (FMAA) which came into force on January 1, 2005. The FMA is an integrated supervisor which is responsible for overseeing the financial market in Liechtenstein with the aim of safeguarding financial center stability, protecting customers, and preventing abuses. It is in charge of implementing and ensuring compliance with laws and ordinances that are relevant to financial institutions and transactions and to DNFBPs. As a member state of the EEA, Liechtenstein must implement in its legislation all relevant EU regulations.

524. The FMA is an independent institution, which is governed by a Supervisory Board of five members appointed for five years. The General Management (four persons) is chosen by the Board which is exclusively accountable to the Parliament (Article 10 FMAA). The General Management and three of the Board members cannot hold a position in any supervised entity.

525. At the time of the on-site visit, the FMA had a staff of 29 members and eight trainees. It is funded by the State budget (54 percent) and fees (46 percent) that are levied on supervised entities. The FMA is audited by the National Audit Office which reports also to the Parliament.

Legal Framework:

Regulation and Supervision of Financial Institutions (c. 23.1) and Designation of Competent Authority (c. 23.2):

526. AML/CFT regulations are set out in the DDA and the DDO which apply to all financial institutions, as well as to DNFBPs that conduct professional financial transactions. Implementation of and compliance with recognized international standards are among the objectives assigned to the FMA (Article 4 FMAA), which is expressly responsible for the supervision and execution of the DDA with respect to the financial sector, as well as to providers of financial services (Article 5.1.p FMAA).

Fit and Proper criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):

527. Banks' shareholders who hold a qualifying holding[33] must meet a fit and proper test (Article 24 BA). Any change in a qualifying holding must be notified to the FMA (Article 26 BA). The FMA may prohibit the intended acquisition or an increase in a holding, or suspend the voting rights for shares held by the persons concerned (Article 27.a.2 BO). Board and management members of a bank or a finance company must "always guarantee sound and proper business operation" (Article 19 BA).

528. According to Article 59 ISO, the FMA must be informed when a natural or legal person intends to acquire a direct or indirect qualifying holding in an insurance undertaking, or to increase its holding above 20 percent, 33 percent, or 50 percent of the voting rights or of the level of the capital, or if the insurance undertaking becomes a subsidiary, or if controlling influence over it is exercised. The FMA is entitled to bar, reverse, or change qualifying holdings if the persons having such holdings do not fulfill requirements of solid and prudent management (Article 61 ISO). Evidence of professional qualification and personal integrity of the general management is a licensing requirement for insurance companies (Article 13.1(g) ISA). Sound and proper business operation is a prerequisite for licensing investment undertakings (Article 56.1.d IUA), and must be guaranteed by administrators' and managers' expertise and

[33] Control directly or indirectly 10 percent or more of the capital or the voting rights, or can exercise a significant influence on the management (Article 3a BA).

personal qualities (Article 68 IUA). However, according to Article 28.1.a IUO, investment undertakings that market only to qualified investors are exempt from the licensing requirement.

529. With regard to asset management companies, the shareholders with a qualifying holding[34] must ensure solid and prudent management of the company (Article 6.1.g AMA). Acquisition of, and increase in, qualifying holding must be notified and approved by the FMA (Article 10.1.b AMA). The FMA may prohibit the intended change in holdings if such a change could adversely affect prudent and solid management and conduct of business (Article 8 AMO). Directors' and general managers' professional and personal qualities must guarantee sound and proper business operations of the asset management company (Article 6.1(g) AMA). Documents to be provided include especially criminal records and information on any criminal and administrative proceedings (Article 4.1(b) and (c) AMO).

530. Pursuant to Article 29 IUA, changes to the general management of a management company, or to the possession of voting capital of the management company, especially qualifying holdings, must be reported immediately to the FMA. The FMA may prohibit the planned acquisition or increase of a qualifying holding if the persons do not meet the requirements necessary to fulfill the interest of ensuring solid and prudent management and conduct of business of the company (Article 32 IUO). The general management must consist of at least two persons, and at least one member of the general management must have the necessary qualifications. The general management may consist of only one person if it is shown that solid and prudent management of the management company is ensured (Article 83 IUO).

Application of Prudential Regulations to AML/CFT (c. 23.4):

531. Ensuring compliance with recognized international standards is one of the objectives of the FMA. In the context of the OFC program, an IMF team conducted an assessment of financial sector supervision and regulation in March 2007. Significant progress was noted in implementing most of the recommendations provided in the previous OFC assessment in 2002. The FMA applies a broad range of prudential requirements in accordance with the Core Principles, including in areas of relevance to AML/CFT such as licensing, risk management processes, ongoing supervision, and consolidated supervision (where applicable).

Licensing or registration of money or value transfer services (c. 23.5)

532. In Liechtenstein, only the banks and Postal Service, which can provide money or value transfer (MVT) services including foreign exchange, are licensed and subject to legislative requirements. MVT services are services within the scope of Article 3 BO and, as such, a license according to the BA is required. The Postal Service is licensed by the Government according to Article 14 Post Office Act.

[34] Control directly or indirectly 10 percent or more of the capital or the voting rights, or can exercise a significant influence on the management (Article 4 AMA).

Effective monitoring of money or value transfer services (c. 23.6)

533. MVT services are defined by the authorities as activities according to Article 4.2.a DDA: "acceptance or safekeeping of the assets of third parties, as well as assistance in the acceptance, investment, or transfer of such assets". If such services are carried out, the relevant transactions are considered to be financial transactions (Article 4.2 DDA) and, as a consequence, any person that carries out financial transactions on a professional basis is subject to due diligence according to Article 3.2 DDA. In practice, MVT activity is confined to the banks and, principally, the Postal Service, which are subject to the ongoing monitoring and supervision of the FMA.

Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):

534. All financial institutions are licensed and supervised by the FMA for AML/CFT purposes, with the exception of the Postal Service which is authorized by the Post Office Act. Other financial services (value transfer providers, exchange offices) which carry professional financial transactions must register with the FMA and are subject to its supervision.

Guidelines for Financial Institutions (c. 25.1):

535. The FMA has the power to issue orders, guidelines, and recommendations (Article 25 FMAA). Pursuant to Articles 13.2 and 28 DDA, two guidelines have been published:

- Guideline 2005/1 defines the monitoring of business relationships and establishes risk criteria (large cash transactions, PEPs), as well as general and specific indicators for money laundering. It describes the scope of enquiries to be made by financial institutions in the case of activities or transactions that are inconsistent with a customer's documented profile and lists the information to be obtained (purpose and nature of transaction, financial and business circumstances of the contracting party or beneficial owner, and origin of funds), and sets out the follow-up action needed, including checking the plausibility of background information obtained; and

- Guideline 2006/2 deals with due diligence inspections conducted by mandated due diligence auditors. It provides the auditors with practical guidance on the audit procedure (mandate, period, deadline), the object of the audit (financial transactions, organization, content), and the report (reporting, complaints, violations, measures, recommendations, follow-up). It specifies also the inclusion of the internal audit department, the cost of inspections, the storage of records and data, and the independence of and training requirements for auditors.

536. None of these guidelines give financial institutions and DNFBPs assistance in implementing and complying with CFT requirements expressly.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1):

537. Pursuant to Article 23 DDA, the FMA is responsible for supervising the "execution of the Act", with the exception of powers granted to the FIU. Article 24 DDA provides that the FMA

shall carry out ordinary inspections on a regular spot-check basis with respect to compliance with the provisions of the DDA or have such inspections carried out. The FMA also has the power to conduct extraordinary inspections under Article 25 DDA. Liechtenstein uses the dual system for supervision where onsite examinations may be conducted by the FMA but, in practice, are conducted by external auditors according to procedures defined by the FMA and under its control (Articles 24 and 25 DDA).

538. There are no specific provisions that allow the FMA to ensure that financial institutions apply AML/CFT measures consistent with FATF Recommendations across financial groups. No reference to foreign branches and subsidiaries is made in the Guideline for due diligence inspections (FMA Guideline 2006/2). However, there are also some relevant measures. Banks are required to inform the FMA immediately if they find that access to information on contracting parties and beneficial owners in certain countries is excluded or obstructed for legal or practical reasons (Article 20.3 DDO). The FMA has the ability to request information and records from foreign supervisory authorities in order to verify compliance with due diligence obligations and to impose sanctions (Article 37 DDA). However, as noted under the analysis for Recommendation 22, requirements for foreign branches and subsidiaries related to AML/CFT measures need strengthening.

Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):

539. In accordance with the DDA, Article 24, the FMA may conduct, or have carried out, ordinary or extraordinary inspections to ensure compliance with the Act. Inspections are performed either by the FMA, or at FMA's request, by external auditors holding a license (Article 24.5 and 6 DDA). Inspection cycle and scope is based on risks (Article 24.2 DDA). For financial institutions, due diligence audits are conducted annually, similarly to the financial audits. Examination entails testing compliance with documentation requirements, as well as assessing the plausibility of information and documentation collected (Article 24.3 DDA).

540. According to FMA Guideline 2006/2, due diligence inspections must include a sample survey of clients, with a mix (50/50) of risk-oriented and random sampling. Statistics for on-site inspections conducted are tabulated in this report as part of the analysis of Recommendation 30 (applying Recommendation 32).

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1):

541. The FMA may demand all information and records that are necessary to perform its supervisory functions (Article 28.3 DDA). Therefore, a court order is not required to permit the FMA to exercise its information-gathering powers. The FMA may sanction with a fine anyone refusing to give information, making incorrect statements, or withholding significant facts (Article 31.1.a DDA). These provisions apply to the FMA's requests, as well as requests by the appointed due diligence auditors when acting on behalf of the FMA. Additional measures against the persons subject to due diligence can be taken in accordance with relevant legislation (Article 34 DDA), but no such additional measures have been defined.

Powers of Enforcement & Sanction (c. 29.4):

542. The FMA has certain powers of action as well as direct access to limited powers of administrative sanction and can also refer a wide range of issues for prosecution by the Courts. In the event of violation of any of the wide range of cases listed as criminal offenses under Article 33 DDA or of offenses under the BA or other sectoral acts, the FMA can bring the offenses to the attention of the General Prosecutor with a view to sanction by the Courts. The FMA informed the assessors that it has not made use of its direct sanctioning power on the basis that no cases arose that fell within the limited scope of the current administrative sanctions but has referred a number of cases for action by the Prosecutor General. Further details are provided in the discussion of Recommendation 17 (below).

Availability of Effective, Proportionate and Dissuasive Sanctions (c. 17.1)
Designation of Authority to Impose Sanctions (c.17.2)

543. In Liechtenstein, criminal sanctions are a matter for the Courts and can arise:

(a) from criminal law (e.g., StGB which sets out the penalties for the crime of money laundering arising under Article 165 StGB); or

(b) under relevant legislation (e.g., Article 30, DDA or sectoral legislation such as the BA).

The details are as follows:

544. Pursuant to Article 63BA, Article 111 IUA, Article 64 ISA, and Article 62 AMA, misdemeanors and administrative offenses shall be sanctioned by the Court of Justice and the FMA. Imprisonment and fines may differ among the acts regulating banking, investment, insurance, and asset management activities (the detailed provisions are included in Annex 3 to this report). The FMA issues specific instructions to auditors for each of their inspections that may define areas of greater concern or require certain inquiries to be conducted. Training sessions for external auditors are also organized every year by the FMA.

545. The Court of Justice shall punish:

- with imprisonment up to six months or one year, or with a fine of up to 360 daily rates a misdemeanor such as violating secrecy obligations, or operating without a required license;

- with imprisonment up to six months, or with a fine of up to CHF100,000 or 180 daily rates, an administrative offense, particularly violating conditions or prohibitions imposed in connection with a license, giving false information to the FMA or the audit office, or as an auditor, grossly violating his or her responsibilities;

- with a fine of up to CHF50,000 or CHF100,000, an administrative offense, principally failing to compile or publish business reports, to have audits required by the FMA conducted or to

comply with a demand to bring about a lawful state of affairs or with any other order by the FMA.

546. Pursuant to Article 165 StGB, daily rates are multiple of daily salary or income, up to a maximum of CHF1,000 per day. The amount is determined by the judge according to the financial resources of the criminal.

547. *Administrative sanctions* are a matter for the FMA, under Article 31 DDA or sectoral legislation. Examples of types of sanction available to the FMA under its prudential powers include written warnings (separate letter or within an audit report), orders to comply with specific instructions (possibly accompanied with daily fines for noncompliance), ordering regular reports from the institution on the measures it is taking, fines for noncompliance, barring individuals from employment within that sector, replacing or restricting the powers of managers, directors, or controlling owners, imposing conservatorship, or a suspension or withdrawal of the license. The offenses under Article 31 DDA for which the FMA can sanction by administrative fine are limited in scope but could result in fines of up to CHF100,000 for anyone who:

- Refuses to give or withholds information or provides false information;
- Fails to comply with a lawful FMA order; or
- Permits the outflow of assets in cases where customer profile information is incomplete.

548. According to Article 34 DDA, these penalties are without prejudice to additional measures taken against persons subject to due diligence, audit offices of banks and finance companies, of investment undertakings, and of insurance undertakings, as well as against auditors and audit companies appointed under the applicable special laws. This means that a violation of the DDA could, for instance, also result in a withdrawal of a banking license or a de facto prohibition for a director to exercise his profession in accordance with the Banking Act. In addition, the FMA has the competence to issue measures by way of an order that are equivalent to penalties (e.g., withdrawal of recognition of a guarantee of sound and proper business operation as long as a director retains his function).

549. Within the limitations of their scope, the range of available sanctions has the potential, if fully used, to be effective, proportionate, and dissuasive. However, in practice, the FMA indicated to the assessors that it has not had occasion to use its legislative powers of administrative sanction as no offenses came to the FMA's attention within the limited scope of the small number of administrative offenses specified in the DDA. The practice has been that more serious offenses are referred by the FMA for action by the General Prosecutor, an approach which the assessors understand has been effective. However, the current approach leaves a gap between administrative and criminal offenses and does not adequately sanction the full range of potential noncompliance with AML/CFT requirements. For example, among the offenses apparently outside the current scope of administrative sanction are the following actions or failures to act:

- failure to carry out simple inquiries if circumstances or transactions arise which deviate from the profile or meet a risk criteria (Article 15.1 DDA);

- failure to document results of inquiries (Article 15.3 DDA);

- discontinuation of the business relationship when suspicion arises of a connection with money laundering, a predicate offense of money laundering, organized crime, or the financing of terrorism (Article 9 DDA);

- failure to identify a contracting party not subject to identification requirement when suspicions arise that assets may be connected with money laundering, a predicate offense of money laundering, organized crime, or the financing of terrorism (Article 6.3 DDA);

- failure to define higher-risk criteria and instructions for limitation and monitoring such risks (Article 13 and 14 DDA); and

- failure to define appropriate internal organization (Article 21.2 DDA), ensure suitable instruments for inspection and monitoring (Article 21.1 DDA), issue internal instructions, and set up staff training programs (Article 21.1 DDA).

550. Minor offenses can either remain unpunished as it would not be a good use of prosecutorial or Court time to pursue them, or are sent to the General Prosecutor and can absorb scarce prosecutorial resources to an extent disproportionate to the importance of the offense. The present system, therefore, does not appear to ensure proportionality of sanctions in all cases and its effectiveness could be improved by introducing and implementing in practice a broader range of administrative sanctions.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

551. As noted, as no corporate criminal liability currently exists in Liechtenstein, penalties are always aimed at the natural persons who have committed the offenses. Under Article 33 DDA, if the violations are committed in the course of the business operations of a legal person or a trust, the penal provisions shall apply to the persons who acted or should have acted on their behalf, but the legal person or the trust fund shall be jointly and severally liable for criminal fines, administrative fines, and costs. On this basis, sanctions can be applied to directors and senior managers.

Range of sanctions–Scope and Proportionality (c. 17.4)

552. As detailed above, the range of available sanctions is broad, particularly for criminal sanctions, but incomplete in the case of administrative sanctions. The FMA has certain powers of action and direct access to limited powers of administrative sanction and can also refer a wide range of issues for prosecution by the Courts. Nevertheless, this leaves a gap in the ladder of sanctions that does not address all appropriate offenses.

553. Among the supervisory measures available to the FMA under Article 28 DDA is the power to prohibit the initiation of new business relationships for a limited period of time in the event of repeated or grave violations of the provisions of the DDA in order to prevent further violations.

554. The FMA also has powers to withdraw licenses, as follows:

- Banks and finance undertakings: Articles 27–29 BA;
- Investment Undertakings: Articles 71–75 IUA;
- Insurance undertakings: Article 55 ISA;
- Asset Managers: Articles 29–32 AMA.

Adequacy of Resources for Competent Authorities (c. 30.1):

555. The FMA is the supervisory authority for all banks, other financial institutions, and DNFBPs in Liechtenstein, is established under the Financial Market Authority Act (FMAA), and has been operational since January 1, 2005. The FMA was formed by consolidating three former units of the Liechtenstein National Administration, namely the Financial Services Authority, the Insurance Supervisory Authority of the Office of Economic Affairs, and the Due Diligence Unit. The FMA is an independent (Article 3 FMAA), integrated, financial market supervisory authority operating as an autonomous institution under public law (Article 2 FMAA). The FMA has its own legal personality in the form of an establishment under public law, is independent of the Government, and is exclusively accountable to the Liechtenstein Parliament.

556. The objectives of the FMA are as follows:

- safeguarding the stability of the Liechtenstein financial center;
- protection of clients;
- prevention of abuses; and
- implementation of and compliance with recognized international standards.

557. The main organs of the FMA are as follows:

- The Board:

The Board is elected by the Parliament for a term of office of five years and has five members. The Board is responsible for implementation of the FMAA and is exclusively accountable to the Liechtenstein Parliament. Within this context, it is responsible for the development and implementation of the Mission Statement and the strategy. Other focus areas include staffing,

organization, and funding. In addition, the Board has special competencies in important cases. Since January 1, 2005, the Board has generally met on a monthly basis.

- The General Management:

The General Management (four members) is nominated by the Board and is responsible for the operational activities of the FMA. It ensures the lawful, goal-oriented, and efficient fulfillment of these tasks.

- The Audit Office:

The audit function of the FMA is carried out by the National Audit Office which reports annually to the Liechtenstein Parliament on its auditing activities. If unusual incidents arise, the Audit Office reports immediately to Parliament.

558. The organizational structure of the FMA is as follows:

Divisions:

- Banking and Securities Supervision;
- Insurance and Pension Funds Supervision;
- Other Financial Service Providers Supervision;

Staff Unit:

- Integrative and International Affairs Unit.

559. At the time of the on-site visit, the FMA had 29 full-time staff members and eight trainees. Permanent staff include 15 lawyers, eight economists, and one mathematician. Several of the staff have experience in commercial banking. The assessment of financial sector supervision and regulation conducted in March 2007 by the IMF as part of the OFC update program found a high standard of compliance with the Core Principles for banks, securities and insurance supervision. It recommended some additional focus on insurance risks and an increase in FMA staff in order to initiate or expand the direct involvement of FMA supervisors in the program of on-site inspections.

560. The FMA has the power to conduct on-site inspections or to have them conducted on its behalf. As noted, the FMA has opted to engage external auditors to conduct both financial audits and due diligence audits on its behalf. While this system has merit in taking advantage of the professional experience of the auditors and their detailed knowledge based on financial audit work of the subject financial institution, it can also have disadvantages which, in the view of the assessors could include:

- The likelihood that the external auditors will abide strictly by the scoping letter or other directions given to them in advance by the FMA, whereas an FMA supervisor conducting such an inspection, by contrast, could have broader discretion to pursue enquiries into unexpected issues that might arise in the course of an inspection;

- The limitations that result on direct on-site experience of FMA supervisors as they have limited opportunity to view at first hand the books and records of the supervised institution (in particular in an AML/CFT context, the due diligence files and customer profiles).

561. In the view of the assessors, while retaining a key role for the external auditors, a greater involvement of FMA supervisors in on-site inspection work could improve the overall effectiveness of AML/CFT supervision. However, this would have significant resource implications for the FMA as additional trained and experienced supervisors would be required, with consequent budgetary implications.

Funding

562. The FMA was entered into the Public Registry on December 13, 2004 as an establishment under public law with a capital of CHF2 million, in accordance with Article 2 FMAA. Each year, the Liechtenstein Parliament has to approve the budget of the FMA. The 2006 budget was CHF6.6 million, 59.5 percent of which was financed by the State and 40.5 percent from fees collected from entities subject to FMA supervision. The 2007 budget is CHF7.27 million, with 54.3 percent financed by the State and 45.7 percent by fees.

Other resources

563. To enhance the operational independence and autonomy of the FMA, as well as to improve the operational processes and to provide management tools for the board and general management, the implementation of an integrated IT-solution is in progress. The intention is to achieve an IT-solution completely independent from the Liechtenstein public administration, on which the FMA was partially dependent at the time of the on-site visit.

Integrity of Competent Authorities (c. 30.2):

564. The FMA staff is bound to discretion according to relevant legislation (Article 23 FMAA). Laws that apply to banks (Article 14 BA), asset management companies (Article 39 AMA), insurance undertakings (Article 44 ISA), and investment undertakings (Article 15 IUA) state in similar terms that representatives of authorities must maintain official secrecy on the facts subject to secrecy or confidentiality that they learn in the course of their duties.

565. The assessors saw evidence that FMA recruitment pays attention to specialized training and professional experience. The majority of the staff members have an academic education, and most of them have a law degree or a degree in business administration. Furthermore, the majority of staff members have practical experience in the financial sector, most of whom having worked previously for either supervisory bodies or financial institutions.

Training for Competent Authorities (c. 30.3):

566. The FMA provided evidence to the assessors to confirm the importance it attaches to basic and continuing training for its staff members. The list of courses attended and training events at which FMA officers were speakers included a range of FATF and MONEYVAL courses and seminars organized in Vaduz, especially at the ICQM, which also provides training for private-sector compliance officers.

Statistics (applying R.32):

567. Financial institutions subject to AML/CFT provisions are audited each year and DNFBPs every third year. The FMA maintains statistics of on-site inspections, as follows:

Due Diligence audit (on-site inspection) reports

	2005	**2006**
Banks	16	16
Asset management companies[35]	2	2
Life insurance undertakings	12	15
Other financial service providers	320	244
Trustees	38	26
Trust companies	146	71
Auditors	-	2
Audit firms	-	7
Lawyers	39	17
Legal agents	1	2
Persons with a confirmation pursuant to article 180(a) of the Law on Persons and Companies	94	70
Currency exchanges offices	-	-
Real estate agents	-	16
Traders with precious goods and auctioneers	-	17
Casinos	-	-
Other subjects to due diligence	3	16
Total	**671**	**521**

[35] Only two management companies carry out professional financial transactions.

Measures pursuant to supervision law/Sanctions

	2005	2006
Measures pursuant to supervision law/sanctions by the FMA	7	26
Reports to the Office of the Public Prosecutor	4	8
Reports to the FIU	2	3
Total	**13**	**37**

3.10.2 Recommendations and Comments

R.17

- Enlarge the definition of administrative offenses to cover all appropriate DDA requirements and establish a continuum of sanctions from minor to serious DDA violations to ensure that cases are processed in a timely, effective, and proportionate manner;

- Define sanctions with regard to criminal liability of legal persons.

R.25

- The FMA should further develop its Guideline on Monitoring of business relationships as part of the strengthening of requirements for enhanced due diligence;

- Guidelines should be established to provide financial institutions and DNFBPs with specific guidance on CFT issues.

R.29

- Introduce a specific provision to allow the FMA to ensure that financial institutions apply AML/CFT measures consistent with FATF Recommendations across financial groups.

R.30

- Consider providing additional resources to allow FMA supervision staff to participate directly in the AML/CFT on-site inspection program;

- Ensure that staff resources are adequate to address the AML/CFT risks of the insurance sector.

3.10.3 Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	• Proportionality and effectiveness of sanction system is restricted by significant gaps in the ladder of available sanctions, as the scope of administrative sanctions is very narrow.

		• No criminal corporate liability is defined.
R.23	**C**	–
R.25	**LC**	• FMA guidelines should be updated, particularly to provide guidance on enhanced due diligence; • No guideline has been issued with regard to CFT requirements.
R.29	**LC**	• No specific provisions that allow the FMA to ensure that financial institutions apply AML/CFT measures consistent with FATF Recommendations across financial groups.
R.30	**LC**	• Additional resources needed if FMA supervisors are to participate in the AML/CFT on-site inspection program; • Additional resources needed for supervision of insurance sector, including with respect to AML/CFT risks.

3.11 Money or value transfer services (SR.VI)

Description and Analysis

568. Money and value transfer (MVT) services in Liechtenstein take place through Liechtenstein Postal Service AG. Postal account holders and occasional customers can choose either to use the postal transfer service or Western Union. For processing postal transfers, Liechtenstein Postal Service operates as an agent of Postfinance (Swiss Post), on the basis of a 1920 Postal Treaty as well as in accordance with a 2005 agreement when the Swiss Post acquired 25 percent of the capital of Liechtenstein Postal Service. Liechtenstein Postal Service is also the exclusive Western Union agent in Liechtenstein, with services available at six of its eight branches.

569. There are roughly 2,000 Western Union transactions a year in Liechtenstein, for a total volume of CHF1.7 million. The average transaction size was CHF800; roughly 60 transactions in the last year were above CHF5,000. There are over one million Swiss Post transfers a year, for a total volume of CHF400 million. The average size of postal transactions is CHF400 and about five percent of transactions in the last year were above CHF5,000. The Swiss Post uses the SWIFT system for processing transfers; Western Union uses its own proprietary system.

570. The Liechtenstein authorities report no evidence of *hawala* or other forms of alternative remittance service. The majority of non-Liechtensteiners residing in the country are from Switzerland and Austria. Under the terms of Article 4.2 DDA, anyone offering money transfer services on a professional basis would fall under the application of the DDA.

571. Article 6.1.b DDA exempts remittances or transfers under CHF5,000 from the identification obligation. In practice, the Liechtenstein Postal Service reports that they perform customer identification for all Western Union transactions, all cash transfers through the postal system which are not associated with a postal or bank account, and for postal transfers to a post or bank account above CHF25,000.

Legal Framework:

Designation of Registration or Licensing Authority (c. VI.1):

572. Money and value transmission falls within the definition of financial transactions in Article 4.2.a DDA and therefore those who provide those services are supervised by the FMA for their compliance with the requirements of the DDA and the DDO.

Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX)(c. VI.2):

573. Of the general strengths and weaknesses of the Liechtenstein CDD and SAR framework identified in Section 3 of this report, failure to require verification of CDD would be relevant in the case of SR.VI, as would the weaknesses identified in relation to SR.VII. In particular, the Article 6.1.a exemption from CDD identified above is higher than would be permitted under SR.VII, where the threshold is set at USD/EUR1,000. While in practice, this exemption is only utilized in the case of transfers to postal or bank accounts under CHF25,000, the exemption means that MVT service operations are not required to obtain and maintain the information required by SR.VII.1.

574. Western Union transactions, because they are not "long-term" in the meaning of Article 13 DDA are not subject to monitoring and would not produce a business profile or a DDA file.

575. Western Union transaction are part of the Liechtenstein Postal Service compliance system. Post employees are trained once a year in DDA compliance and have internal procedures for detecting suspicious transactions. The compliance officer and senior management are involved if an employee has a suspicion about a transaction. They will avail themselves of the FIU consultation procedure and have filed SARs.

Monitoring of Value Transfer Service Operators (c. VI.3):

576. Western Union transactions are audited by the FMA for compliance with the DDA. The audits are conducted annually, using a mandated audit firm, as a part of the audits of the Liechtenstein Postal Service.

List of Agents (c. VI.4):

577. Not applicable

Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):

578. Liechtenstein Postal Service employees could be sanctioned for violations of the DDA, with the strengths and weaknesses of the system identified in Section 3 above.

3.11.1 Recommendations and Comments

- Reduce the legal threshold for MVT CDD to conform to the FATF wire-transfer threshold (USD/EUR1,000).

3.11.2 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**LC**	• Threshold for obtaining customer identification is too high

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

(applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

General coverage of DNFBPs - description

579. CDD obligations for DNFBPs are the same as those for financial institutions and are subject to the same strengths and weaknesses identified in Sections 3.1 and 3.3 above. In particular, the general issues raised by Liechtenstein's implementation of a risk-based system are of particular relevance, especially those associated with under-appreciating the potential risk of cross-border business and with the identification of ultimate beneficial owners and controllers (see Sections 1.6.c and 3.1 above). Trust and Company Service Providers (TCSPs) conduct a great deal of cross-border and non face-to-face business along similar lines to those described above and should, therefore, be considered particularly vulnerable.

580. The FMA Guidelines on the DDA also apply to all DNFBPs, who are inspected by FMA-authorized auditors every three years.

581. Article 3.1 DDA establishes a list of legal and natural persons who are covered entities ("persons subject to due diligence") to the extent they conduct financial transactions as defined in Article 4 DDA. Article 3.2 DDA further provides that any other natural or legal person who conducts financial transactions as defined in Article 4 DDA on a professional basis is also covered by the law.

582. The list of natural and legal persons contains the following DNFBP categories:

- Casinos (Article 3.1.f DDA);[36]
- Persons holding a professional trustee license in accordance with the Act on Trustees (December 9, 1992, as amended) (Article 3.1.g DDA);
- Confirmed company directors under PGR 180a (Article 3.1.h DDA);
- Lawyers and legal agents (Article 3.1.k DDA);[37]

[36] There are currently no casinos in Liechtenstein, in accordance with its 1923 Customs Treaty with Switzerland. The references in the DDA are therefore precautionary, in the event that Liechtenstein decides to follow Switzerland's recent decision to lift its casino ban.

[37] "Legal agents" are an extremely small (2 persons) class of practitioners who were so registered in February 1958, or were granted a subsequent permit (Act on Lawyers, Article 67).

- Auditors and auditing companies holding a license pursuant to the Law on Auditors (Article 3.1.l DDA);

- Real estate agents (Article 3.1.m DDA); and

- Dealers in high-value goods and auctioneers (Article 3.1.n DDA).

583. Lawyers: In addition to Liechtenstein residents, the definition of lawyers also contains two groups of non-Liechtenstein residents. Lawyers from EEA member states with appropriate credentials and experience who want to practice and reside in Liechtenstein must go through a certification procedure, take an aptitude test in German, and–if successful–are entered into a Liechtenstein list of lawyers. (Article 45 Act on Lawyers). They are subject to the DDA and are so supervised by the FMA. On the other hand, EEA lawyers who are only practicing on a "preliminary" basis are not entered onto this list. They can act only in agreement with a "listed" Liechtenstein lawyer and must go through the certification procedure if they want to practice independently (Articles 55-57 Act on Lawyers). However, even this group is subject to the DDA and supervised by the FMA if they carry out financial transactions as defined by Article 4 DDA.

584. Trustees: Trustees from within the EEA can also provide company formation services within Liechtenstein subject to similar conditions, depending on whether the work is "preliminary" or residential. Like lawyers, they would be subject to the DDA and supervised by the FMA to the extent that they carry out "financial transactions" as defined by Article 4 DDA. The authorities report that, in fact, no trustee from an EEA member state has ever registered in Liechtenstein.

585. Liechtenstein lawyers are permitted to obtain a limited trustee license that allows them to form companies and act as directors. This license is more easily obtained than the full license and the majority of Liechtenstein lawyers hold it or the full trustee's license. As a result, they tend to perform most of the actions covered under the DDA in their capacity as trustees, rather than as lawyers. When the term TCSP is used in this section, it will include lawyers working in the trustee capacity.

586. The definition of financial transactions contains two general provisions and several specific provisions relevant to DNFBPs. The first general inclusive provision covers:

> "every acceptance or safekeeping of the assets of third parties, as well as assistance in the acceptance, investment, or transfer of such assets" (Article 4.2.a DDA)

The second general inclusive provision covers:

> "establishing a legal entity on the account of a third party that does not operate commercially in the domiciliary State or acting as an organ of such a legal entity" (Article 4.2.b DDA).

587. The specific provisions involve both exclusions and inclusions to these general provisions. Among them:

- Transactions of real estate brokers in Liechtenstein real estate are excluded (Article 4.3.e DDA);

- Establishing a holding company that holds "an operational group" for a third party or acting as an organ thereof is excluded (Article 4.3.d DDA);

- Cash transactions of dealers in high-value goods and auctioneers are included if they exceed CHF25,000 (currently USD21,000/EUR15,250) either in one or in bunched transactions (Article 4.4.a DDA); and

- Granting admission to a casino is included. (Article 4.4.b DDA)

588. The specific provisions covering lawyers are laid out in a particularly complex manner (Article 4.4.c DDA) but, in effect, lawyers operating as trustees would be subject to the same obligations as non-lawyer trustees. The default is that the business relationships of lawyers and legal agents are excluded unless they involve "planning and execution of financial or real estate transactions for his client...with respect to the following":

- Purchase and sale of enterprises or foreign real estate;

- Management of money, securities, or other assets;

- Opening or managing of accounts, deposits, or safe deposit boxes;

- Obtaining the means necessary for the formation, operation, or management of legal persons, companies, trusts, or other associations or asset entities; and

- The establishment on account of a third party of a legal entity that will not operate commercially in the domiciliary state or acting as an organ of such a legal entity

589. TCSPs: Most TCSPs interviewed reported that a large, but decreasing, percentage of their business was introduced through foreign (usually Swiss) intermediaries. Most had in place agreement procedures with those intermediaries which established that those intermediaries conducted due diligence under Liechtenstein law and transferred the necessary documentation to the Liechtenstein TCSP before the formation of the company.

590. The mission only met with one high-value goods dealer (a jeweler), who reported he had never engaged in a cash transaction over CHF6,000.

General coverage of DNFBPs - analysis

591. The formation of certain commercially-active companies or holding companies that own commercially-active companies is not a covered activity under the DDA. Such an exclusion is not consistent with FATF definition of trust and company service provision and, in the case of holding companies, could theoretically be used to exclude a fairly broad range of company formation activities. In practice, all of the Liechtenstein trustees who were interviewed stated that they conduct due diligence on all their clients, regardless of the kind of company formed. However, they are not obliged to do so by law or regulation with regard to those clients who form commercial enterprises or holding companies that hold commercially-active companies.

592. One of the specific definitions of covered transactions that pertains only to Liechtenstein lawyers is that they are covered when they plan or execute transactions on behalf of a client that pertain to the purchase or sale of "unternehmen" (enterprises). This term exclusively refers to legal persons and would therefore exclude any transactions concerning the purchase or sale of legal arrangements or rights in legal arrangements. However, the authorities indicate that, in their interpretation, such transactions would be covered because they would constitute the "performance of activities as an organ of a legal entity that does not operate commercially in the domiciliary state." (Article 4.3.c.5 DDA).

593. The authorities explain the exclusion of domestic Liechtenstein real estate transactions from DDA coverage (in reference to real estate agents and to lawyers) by the highly controlled and restricted nature of the Liechtenstein real estate market. Any party seeking to purchase Liechtenstein real estate, including returning residents and citizens, must make application for the purchase to a special government commission, which will establish whether the buyer has a justified reason for the purchase. The commission needs to obtain information on the buyer's identity to establish whether a justified reason exists. The authorities explained this exception as a risk-based decision not to apply some or all of the FATF requirements to this category of transactions. The assessment team agrees that the Liechtenstein real estate market has some unique characteristics which make it an extremely unlikely vehicle for money laundering or terrorist financing, but notes that current FATF practice is not to apply risk-based exceptions to DNFBPs.

Analysis of compliance with Recommendations and Criteria

Applying R. 5

Criterion 5.1

594. While the specific prohibition of anonymous accounts in Article 12.3 and 12.4 DDA does not apply to DNFBPs, the DDA's general CDD obligations (Article 5) would effectively eliminate the possibility of anonymity in the relations between those Liechtenstein DNFBPs that have client accounts and the clients in question.

Criterion 5.2

595. With the exception of the coverage issues noted in the General Coverage section above, Liechtenstein DNFBPs are required by the DDA to undertake CDD measures as required by this criterion. Their performance in this regard is reviewed during their tri-annual audit. Interviews with the authorities, auditors, and DNFBPs indicated that this obligation was fully implemented. In particular, all TCSPs reported that they conducted customer identification on all clients, whether or not they were forming a commercial or a non-commercial structure, which would represent a voluntary practice not required by law or regulation in all cases.

Criterion 5.3

596. The concerns expressed in Section 3.2 on the limitations on verification when CDD is conducted by intermediaries have equal merit for TCSPs, although not for dealers in precious metals and stones or real estate agents. All TCSPs interviewed reported that when the DDA was first extended to TCSPs, some clients had been reluctant to submit to the required CDD obligations and some TCSPs had lost clients as a result of applying the new measures. Now, however, they reported that they were no longer experiencing difficulty in obtaining customer identification information from clients or intermediaries. The tri-annual audit checks whether the due diligence files contain documents that "meet the formal requirement" (Inspection Report pursuant to the Due Diligence Act, January 1, 2007—hereafter, DDA Inspection Template, section 4.1)

Criterion 5.4

597. The concerns expressed in Section 3.2 with regard to verification requirements (in particular the absence of a formal requirement to verify the identity of parties authorized to act on behalf of a customer) also apply to DNFBPs–especially those providing TCSP services.

Criterion 5.5

598. According to Article 7.2.c DDA, a written statement identifying the beneficial owner is always required if the contracting party is a legal entity that does not operate commercially in the domiciliary state. This provision would pertain to the majority of TCSP business, although the issues with the exclusion of commercially-active companies would apply here as well. The due diligence files of all covered DNFBPs are audited to ensure that written certifications of beneficial ownership are included wherever appropriate. All TCSPs interviewed stated that they required all clients to submit a written certification of beneficial ownership in all cases, whether or not they had a doubt and whether or not the client was forming a commercial or a non-commercial structure.

Criterion 5.6

599. The business profile required by Article 14 DDA and described in Article 21 DDO must include information on the purpose and intended nature of the business relationship and DNFBP performance in this area is subject to audit. All TCSPs interviewed maintained a business profile

in accordance with Article 21 DDO on all clients, even those cases which might not qualify as financial transactions under Article 4 DDA.

Criterion 5.7

600. Article 13.1 DDA requires ongoing monitoring of the business relationship and Article 15.1-2 DDA could be seen as indirectly requiring ongoing monitoring of transactions, because such monitoring would be necessary to identify transactions or circumstances that deviated from the profile or were suspicious. Compliance with Article 13.1 DDA is audited. All TCSPs interviewed monitored all transactions on financial institution accounts of entities for which they served as nominee directors.

Criterion 5.8

601. The concerns expressed in Section 3.2 of this report about the lack of a definition or requirement in the DDA or DDO concerning enhanced due diligence are equally applicable to TCSPs, the vast majority of whose clients are non-resident. All interviewed TCSPs performed enhanced due diligence on PEPs and other customers that they considered to be higher risk. DDA Inspection Template section 4.6.6 requires auditors to report on the inspected party's PEP policy.

Criterion 5.9

602. The exceptions to the due diligence obligations in Article 6 and 8 DDA would not typically apply to DNFBPs in Liechtenstein.

Criterion 5.10

603. Not applicable

Criterion 5.11

604. Not applicable

Criterion 5.12

605. Like financial institutions, DNFBPs must establish criteria for higher risk pursuant to Article 13.2 DDA and are covered by the same FMA Guideline 2005/1 identified in Section 3.2 above.

Criterion 5.13

606. Like financial institutions, DNFBPs must obtain contracting party and beneficial owner information when entering into a business relationship, pursuant to Articles 5 and 7 DDA. In interviews, no TSCP reported forming an entity for a new client before completing the CDD

requirements. However, the audit form does not require auditors to compare the dates of the profile and the initial company formation.

Criterion 5.14

607. Article 16.1 DDO provides DNFBPs, like financial institutions, a conditional "exceptional" option of delaying collection of CDD information and documents for 30 days. The TCSPs interviewed indicated that they have not made use of the flexibility offered in Article 16.1 DDO.

Criterion 5.15

608. Like financial institutions, TCSPs and lawyers reported conducting consultations with the FIU when they had concerns about the veracity of due diligence information.

Criterion 5.16

609. Interviews with TCSPs and lawyers elicited reports of business declined and existing relationships terminated by existing clients' refusal to provide customer and beneficial owner information as required by the DDA.

Criterion 5.17

610. All TCSPs and lawyers interviewed reported on the extra efforts required to conduct retrospective due diligence on existing clients when the DDA came into force.

Criterion 5.18

611. Not applicable.

Applying Recommendation 6 (PEPs)

Criterion 6.1

612. The DDA requires covered DNFBPs, like other persons subject to due diligence, to establish criteria of higher risk and issue instructions on how the risks should be limited and monitored (Article 13 DDA). The DDO (Article 1.b) defines the term politically-exposed person (PEP) as persons holding prominent public positions abroad and "enterprises and persons who are recognizably close" to them. Article 27.2.e-g DDO fleshes out the internal instruction requirement. However, only the FMA guideline (not the DDO or DDA) states that PEP status should be considered a risk factor (Paragraph 3.b FMA 2005/1). TCSPs interviewed reported that they perform such risk assessment and most firms indicated that PEP status placed a client in the highest-risk category. Most large and mid-sized TCSP companies used commercially-available database services and internet searches to check PEP status and the smaller firms only the latter. This requirement is checked via the periodic audit of DNFBP compliance with the DDA.

Criterion 6.2

613. Large TCSP firms reported that they required senior management approval for establishing business relationships with any PEP. PEP policy is a specific required area in all DNFBP audit reports.

Criterion 6.3

614. The business profile for all clients, including PEPs, is required to include information on the origin and intended use of the assets and the professional and business activities of the client. The degree of detail should be adjusted in relationship to the risk involved in the business relationship (Article 21 DDO). The quality of these profiles is subject to audit.

Criterion 6.4

615. As noted in Section 3.2, enhanced ongoing monitoring of PEP accounts is not required by law, regulation, or other enforceable means, although business conducted with PEPs is subject to the general risk-based provisions of the DDA and the DDO. In practice, TCSP firms that reported having PEP clients indicated that senior management was involved in ongoing transaction monitoring of such clients.

Applying Recommendation 8

Criterion 8.1 (new technologies)

616. Liechtenstein law contains few formal legal requirements concerning the misuse of technological developments that pertain to DNFBPs. Articles 18 and 19 DDO set out requirements concerning the use of computerized systems and secure electronic transactions on the part of persons subject to due diligence. Article 28 DDO requires that staff training concerning money laundering and financing of terrorism requirements be kept up to date.

Criterion 8.2 (non-face-to-face transactions)

617. Article 3.2 DDO requires that customer identification conducted by correspondence require at least a certified copy of the identification documents, with a confirming signature. Paragraph A26 of the Annex to FMA Guideline 2005/1 indicates that a client who tries to avoid contact initiated by the financial intermediary can be seen as risky. Other than these, there are no requirements concerning the conduct of non-face to face relationships.

618. In interviews, most TCSPs indicated that they would customarily meet their clients before forming a company for them. However, this practice was neither universal nor legally required. Subsequent business discussions or transactions would normally not be face-to-face and would not be subject to particular risk-mitigating procedures.

Applying Recommendation 9 (intermediaries/introduced business)

619. As with financial institutions, many TCSP clients are introduced by foreign intermediaries who will conduct the CDD for the Liechtenstein TCSP. Therefore, the recommendations and analysis presented in Section 3.2 are equally valid here, as are the concerns about the possibility of delegating ongoing due diligence, the protection of the Liechtenstein party from punishment if the third party does not perform due diligence, and the overall level of risk associated with these relationships.

Applying Recommendation 10 (recordkeeping)

620. Like financial institutions, DNFBPs must keep records for 10 years, pursuant to Article 20.1 DDA and 25.c-e DDO.

Applying Recommendation 11 (monitoring)

621. As critiqued in Section 3.2, the Liechtenstein system's approach to ongoing monitoring of transactions and clients focuses on the client profile and the mechanism of "simple" and "special" inquiries, rather than an explicit requirement to pay special attention to complex, unusual, and large transactions.

Analysis of Effectiveness

622. Liechtenstein DNFBPs are obliged to conduct CDD in accordance with the DDA/DDO and they are regularly inspected to ensure that they do so. Interviews with DNFBPs demonstrated a widespread comprehension of their obligations under the law and the DNFBPs interviewed were able to credibly maintain that they did indeed conduct the CDD required—and in many cases (PEPs, commercially-active companies) that they conducted CDD that was not explicitly required by the law. The shortcomings for the DNFBP sectors are therefore those common to the legal framework for CDD and related matters and are not materially exacerbated by systematic failures to effectively implement the system.

4.1.2 Recommendations and Comments

R5

- Strengthen legislative requirements to cover the formation of all kinds of companies: TCSPs should conduct CDD and ascertain the beneficial owner when forming commercially-active entities and holding companies that contain commercially-active entities;

- Define in law or regulation a wider range of high-risk customers to include notably non-resident accounts, accounts opened through an intermediary, entities with bearer shares, trusts and foundations, and entities registered in privately-managed registers and databases;

- Define and explicitly require by means of law or regulation enhanced due diligence for high-risk customers;

- Strengthen obligation to verify identification data for customers entering into business relationships, beneficial owners, and authorized parties;

- The FMA should consider classifying business obtained through cross-border third-party intermediaries as requiring a level of enhanced due diligence;

R6

- Provide an explicit requirement for enhanced due diligence for PEP-related business, preferably in law or regulation, having regard to the level of potential risk in Liechtenstein;

- Require DNFBPs to obtain senior management approval to continue the business relationship when an existing customer or beneficial owner is found to be, or subsequently becomes a PEP;

- Provide for an explicit legal obligation by DNFBPs to determine the source of wealth of customers and beneficial owners identified as PEPs;

- Consider applying similar measures to domestic PEPs;

R8

- Require DNFBPs to take measures to address the risk of misuse of new technologies for ML or FT purposes;

- Require DNFBPs to take measures to address expressly the risk of non-face to face business;

R9

- Amend the DDA to exclude the conduct of ongoing monitoring from the scope of delegation to third parties;

- Remove the protection from punishment set out in Article 30.2 DDA in the event of the failure of an intermediary to meet DDA requirements;

- The authorities should determine countries in which third parties who conduct the due diligence on behalf of Liechtenstein DNFBPs can be based, by reference to the adequacy of their application of the FATF Recommendations;

R11

- Provide explicitly that DNFBPs be required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**	• Commercial company formation not covered by the DDA;

		• Requirements to identify beneficial owners need to be strengthened, especially in regard to natural persons holding rights or interests; • No explicit requirement for enhanced due diligence for high-risk customers; categories of such customers inadequately specified; • No requirements for verification of identity of authorized parties; • Requirement and procedures for conducting enhanced due diligence for PEP-related business should be more explicitly specified; • Extensive reliance on non-resident third-party intermediaries, including for conducting ongoing monitoring, which is not classified by the Liechtenstein authorities to be high risk; ad hoc approach to determining the countries in which an acceptable third party intermediary can be based; responsibility in delegating to a third party is unduly limited by the protection from punishment; • No specific requirement for financial institutions to have policies and procedures to reflect the additional risk involved in non-face to face business relationships or transactions; • Requirement to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose only implicitly imposed.

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15 & 21)

4.2.1 Description and Analysis

623. Whenever a DNFBP is not conducting a financial transaction within the meaning of Article 4 of the DDA, it is not required to report to the FIU. In addition, lawyers and legal agents enjoy legal privilege in that they are not required to report on information they have received in the course of assessing the legal situation of a client, acting as defense attorney, or representing the client in court proceedings, including giving advice on the pursuit or prevention of such proceedings (Article 16.6 DDA). This article also extends to auditors, auditing companies, and auditing offices subject to special legislation (who also enjoy a general right of confidentiality during judicial proceedings under Article 10 of the Law on Auditors) when they are representing a client concerning court proceedings. This level of legal privilege is consistent with the Note on legal professional privilege in the FATF Methodology. Lawyers file SARs directly with the FIU.

624. Unlike the banking sector, where nearly every institution has been involved in the SAR regime, among the DNFBPs, to date, only trustees and lawyers have filed SARs. Moreover, only some 10–15 percent of all professional trustees and a much smaller percentage of lawyers have filed reports.

625. The consultation mechanism with the FIU, described in Section 3.7 above, is routinely used by DNFBPs.

626. Suspicious activity reports by sector

	2003	2004	2005	2006
Professional trustees (includes lawyers when acting as company formation agents)	82	89	74	65
Lawyers	5	9	8	9

Applying Recommendation 13

Criterion 13.1

627. DNFBPs, like financial institutions, are required to file SARs when a suspicion of a connection with money laundering, a predicate offense of money laundering, organized crime, or the financing of terrorism arises. This can be triggered by an inquiry into a transaction that deviates from the established business profile or one that meets established risk criteria. An obligation to file a SAR can also be triggered in connection with short-term business relationships (for which a profile would not have to be established). The issues concerning the overly-complicated nature of the mechanisms for forming a suspicion have been already addressed in Section 3.7 of this report and are equally valid for DNFBPs.

628. The obligation to report SARs is meant to be immediate and the questions raised in Section 3.7 concerning the mechanism of prior consultation with the FIU are valid here as well, as DNFBPs have reported that they use and are supportive of the consultation mechanism.

629. The main problem for DNFBPs is implementation of the reporting requirement. As the statistics above show, SARs from DNFBPs are few relative to the number of transactions conducted and reporting DNFBPs represent a small fraction of the sector.

Criterion 13.2

630. As critiqued in Section 3.7 of this report, the reporting obligation under Article 16 DDA includes the financing of terrorism, but has not been extended to explicitly include funds that are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations in addition to those who finance terrorism.

Criterion 13.3

631. As noted in Section 3.7 above, there is no requirement to report attempted occasional transactions. There were some reports from TCSPs of interactions with the FIU concerning potential clients who ended up not forming business relationship with Liechtenstein TCSPs. In at least one case, a SAR was filed.

Criterion 13.4

632. The exclusion of tax-related activity from ML predicate offenses is equally applicable to DNFBPs, as is the requirement to report when other predicate crimes are indicated in conjunction with tax-related activity. See Section 3.7 of this report.

Applying Recommendation 14:

Criterion 14.1

633. Article 16.3 DDA is structured in a manner such that it does not appear to provide expressly for protection for reporting in good faith, though this would appear to be the intention. The provisions do not refer to protection for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory, or administrative provision. Neither does it explicitly provide protection for directors, officers, and employees (permanent and temporary) of the reporting entity, referring only to the person subject to obligations of the DDA. There is no reference in the provisions to the protection being available even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

634. As critiqued in Section 3.7 of this report, the formulation of the protections for reporting entities could be made more explicit to conform more closely with Recommendation 14. TCSPs and lawyers interviewed considered themselves to be safe from any claim of breach of professional secrecy by the provisions of Article 16.3 DDA.

Criterion 14.2

635. As critiqued in Section 3.7 of this report, TCSPs, like financial institutions, are only prohibited from tipping off clients for 20 days. Some TCSPs noted that, since they are often acting on instructions of clients, the inability to tell clients immediately why their instructions are not being implemented could be a source of tension in the client relationship.

Applying Recommendation 15

Criterion 15.1

636. According to Article 21 DDA, DNFBPs, like financial institutions, must take necessary organizational measures and ensure internal instruments of inspection and monitoring appropriate to the type and size of the enterprise and the number and complexity of its business relations. DNFBP's internal procedures are subject to audit by the FMA. All large and medium TCSPs interviewed could produce written internal guidelines.

Criterion 15.2

637. Unlike financial institutions, TCSPs and lawyers do not routinely have an internal audit function, but Article 22 DDA requires an "investigating officer" and a "compliance officer" and 30 and 31 DDO establishes that their duties should be to:

- design the internal AML/CFT organization;
- prepare internal instructions;
- plan and monitor internal basic and continuing staff training;
- ensure that necessary records are prepared and kept;
- ensure that due diligence obligations are undertaken regularly;
- ensure that reporting obligations have been duly complied with; and
- ensure that requests from responsible domestic authorities can be completely fulfilled within an appropriate period of time.

638. In the view of the assessors, such a system, if adequately resourced and implemented, could fulfill the role of an internal audit function in financial institutions.

Criterion 15.3

639. DNFBPs' training procedures and performance are subject to audit by the FMA. All large and medium TCSPs interviewed could produce written internal guidelines and reported robust training programs.

Criterion 15.4

640. Professional trustees, lawyers, and auditors in Liechtenstein are subject to very rigorous licensing requirements, which include higher education, mandatory professional experience, demanding examinations, and demonstrating a generally "trustworthy" character. All the TCSPs and lawyers involved were very aware of reputational risk and screened employees to try to minimize it.

Applying Recommendation 21

Criterion 21.1

641. As noted in Section 3.6 of this report, the FMA Guidelines identify large or frequent "drug producing countries" and those on the FATF NCCT list as being risk factors for money laundering (Paragraph A20, Annex, FMA 2005/1), but do not specifically refer to countries that do not or insufficiently apply the FATF Recommendations. In practice, most of the TCSPs

interviewed did take country of origin into account when assigning and profiling risk and did not limit their analysis to the two categories in the FMA Guidelines.

Criterion 21.2

642. As critiqued in Section 3.6 of this report, in the case of transactions with persons from countries that do not sufficiently apply the FATF Recommendations, where the transactions have no apparent economic or visible lawful purpose, Liechtenstein does not require expressly that the background and purpose of such transactions should be examined and written findings made available to assist competent authorities (e.g., supervisors, law enforcement agencies, and the FIU) and auditors.

Criterion 21.3

643. Not applicable in the context of Recommendation 16.

4.2.2 Recommendations and Comments

- Conduct outreach to non-reporting TCSPs and take other appropriate measures to increase the breadth of DNFBP reporting.

R.13

- To enhance effectiveness: remove the provision for automatic freezing of assets on the filing of an SAR; simplify the SAR reporting requirement so as not to have the forming of suspicion made legally conditional on conducting prior simple and special enquiries under Article 15 DDA; and ensure that the pre-clearance system for SARs, as currently applied by the FIU, is not permitted to undermine the effectiveness of the system of SAR reporting.

- Extend the SAR reporting requirement to include attempted occasional transactions;

- Extend the SAR requirement to explicitly include funds that are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organizations, in addition to those who finance terrorism;

R.14

- Include provisions extending protection to directors, officers, and employees;

- Remove the time limit on the prohibition of tipping off.

R. 21

- Introduce a specific requirement to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations;

- Introduce effective measures to ensure that DNFBPs are advised of concerns about weaknesses in the AML/CFT systems of other countries;

- Introduce a requirement that DNFBPs examine the background and purpose of such transactions with no apparent economic or visible lawful purpose, with findings documented and available to assist competent authorities and auditors.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	• Attempted occasional transactions are not covered by the SAR reporting requirement; • Funds that are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organizations are not specifically included within the SAR reporting requirement; • Low SAR reporting rates for DNFBPs; • The tipping off provision applies only for a maximum of 20 days; • Directors, officers and employees (permanent and temporary) are not explicitly covered; • No explicit requirement to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations; • Limited measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

644. The FMA is the competent supervisory authority for all entities subject to due diligence under the DDA, including all DNFBPs. Liechtenstein self-regulatory organizations (SROs) do not play any role in monitoring compliance with the DDA. A special section of the FMA, with four staff, is responsible for DDA supervision of the DNFBP sector.

645. DNFBPs are subject to regular due diligence audits every three years. These audits, as noted in Section 3.10 above, are conducted indirectly by specially-licensed external audit firms, and can be supplemented by extraordinary audits at the request of the FMA. FMA staff do not routinely participate in these audits, but have occasionally participated in extraordinary audits. The figures for 2005-2006 are as follows:

Numbers of DNFBPs audited

	2005	2006
Trustees	38	26
Trust companies	146	71

Auditors	-	2
Audit firms	-	7
Lawyers	39	17
Legal agents	1	2
Persons with a confirmation pursuant to article 180(a) of the Law on Persons and Companies	94	70
Real estate agents	-	16
Traders with precious goods and auctioneers	-	17
Casinos	-	-
Other subjects to due dilligence	3	16
Totals	321	244

646. The 2005 selection was taken from a group of 460 natural and legal persons who were either newly-established entities or had not been audited during the previous three years. This group received a questionnaire to ascertain whether or not they had conducted a financial transaction within the meaning of the DDA and whether they had operated independently in the audit period. Those which met these tests were audited; a similar procedure was followed in 2006. The FMA follows up annually with those DNFBPs that have been ruled out in previous years based on inactivity to ascertain if they have resumed conducting financial transactions.

647. The 2005 audit cycle reported general improvement in compliance, but saw room for further improvement in the completeness and explanatory power of the business relationship profiles and in the determination of the plausibility of transactions that deviated from the profile. 15 reports identified specific deficiencies, all of which were rectified. 21 follow-up inspections were ordered, but no extraordinary inspections. In 2006, 11 reports showed deficiencies, 12 follow-up inspections were ordered, and there was one extraordinary inspection triggered by press reports.

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):

648. Not applicable

Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):

649. Liechtenstein DNFBPs are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. Staffing resources appear generally adequate, given that the inspection function is largely outsourced to auditors. Interviews with supervised DNFBPs and auditors indicated that the FMA staff actively read, commented, and responded to the audit reports they received. Consideration could be given to increasing the periodicity of audits, given the ML/FT risks faced by the Liechtenstein DNFBP sectors.

650. The AML/CFT sanctions regime pertaining to DNFBPs is the same as that for financial institutions and has the same shortcomings as analyzed in Section 3.10, above, especially concerning the inadequacy of the ladder of criminal, administrative, and civil penalties. DNFBPs, like all covered entities, are subject to the criminal penalties set out in Article 30 DDA. These penalties punish intentional violations of the CDD, SAR, and other DDA obligations by fines up to CHF360,000 (360 daily rates) or six months imprisonment. Article 31 DDA sets out administrative fines up to CHF100,000 for, *inter alia,* withholding or giving false information, or failing to comply with FMA orders. Lawyers, trustees, and auditors, but not the other DNFBPs, are further subject to the disciplinary powers of the Court of Appeals for negligent violations of the obligations of their professions—which was widely understood to include violations of Liechtenstein law. One legal agent was disciplined for a DDA violation through this mechanism. These sanctions range from a written reprimand, fines up to CHF50,000, temporary suspension of the right to practice, to a permanent prohibition of that right.

Guidelines for DNFBPs (applying c. 25.1):

651. The FMA has issued guidelines on monitoring business relationships and the conduct of the due diligence inspections. The former contains an annex with a detailed description of potential indicators of money laundering. Both are useful documents, which have been well received by the relevant parties. As with financial institutions, there is no FIU guidance on SAR reporting for DNFBPs.

4.3.2 Recommendations and Comments

- Consider increasing the frequency of DDA audits for TCSPs;
- Consider more direct involvement of FMA staff in DDA audits;
- Expand administrative offenses in order to establish a continuum of sanctions from minor to serious DDA violations and to ensure that cases are processed in a timely, effective, and proportionate manner.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBPs)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**LC**	• Proportionality and effectiveness of sanction system is restricted by significant gaps in the ladder of available sanctions, as the scope of administrative sanctions is very narrow; • No corporate criminal liability is defined.
R.25	**LC**	• FMA guidelines should be updated, particularly to provide guidance on enhanced due diligence; • No guideline has been issued with regard to CFT requirements. Section-specific rating would be: LC

4.4 Other non-financial businesses and professions & Modern-secure transaction techniques (R.20)

4.4.1 Description and Analysis

Other Vulnerable DNFBPs (applying R. 5, 6, 8-11, 13-15, 17 &21 c. 20.1):

652. The FMA has issued guidelines on monitoring business relationships and the conduct of the due diligence inspections. The former contains an annex with a detailed description of potential indicators of money laundering. Both are useful documents, which have been well received by the relevant parties.

Modernization of Conduct of Financial Transactions (c. 20.2):

653. Cash is not heavily used within Liechtenstein, although this appears to have been more a natural development within the marketplace, rather than as a result of any specific action of the authorities. Due to the Customs and Monetary Union with Switzerland, many of the relevant decisions are not in the hands of the Liechtenstein authorities

4.4.2 Recommendations and Comments

- None

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**C**	**—**

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

654. According to Article 180a PGR, all legal persons subject to Liechtenstein law and not commercially active in the domiciliary state (see Section 1.4. of the report) are required to have at least one natural person as director who is licensed pursuant to the Act on Trustees (TrHG), whereby persons licensed in accordance with the TrHG are subject to the obligations under the DDA and DDO. Article 7 in connection with Article 9 DDO provides that in case of doubt that the client is the beneficial owner of a legal entity, the client has to provide a written and signed statement, in accordance with Article 3 DDO, disclosing information on the beneficial owner. Article 7.2.c DDA further provides that if the contracting party is a legal entity that does not operate commercially in the domiciliary State, such a written statement is required in all cases.[38]

655. Beneficial owner is defined through Article 11 DDO as "those persons who ultimately hold the economic rights to assets in question." For legal entities that have no or only a class of designated beneficiaries, Article 10.4 DDO determines that information on the persons authorized to instruct the contracting party or its organs as well as on curators, protectors, and other appointed persons has to be provided as well.

656. The Liechtenstein public registry does not record beneficial ownership information but registers the names and address of all Article 180a PGR directors.

657. Nominee directors, nominee shareholders, protectors/collators and nominee founders are permitted under Liechtenstein law and are frequently used in relation to trusts and foundations (Stiftungen). Through Article 180a PGR, the obligation to obtain beneficial ownership information on legal persons not commercially active in the domiciliary state is extended to trustees in their capacity as nominee directors.

658. As mentioned above, Article 180a PGR requires all companies not commercially active to use the services of a licensed Liechtenstein trustee. In the case of commercially-active companies, this provision does not apply; therefore, although such companies may choose to utilize the services of a trustee, there is no legal obligation to do so. The authorities estimate that in 95 percent of the cases trustees provide services to companies not commercially active, whereas only five percent of the cases relate to commercially active companies. While the

[38] Article 4.2.c DDA provides that "a legal entity that does not operate commercially in the domiciliary State is, in particular, a legal person, company, trust, or other association or asset entity–regardless of its legal structure–that does not conduct any trade, manufacturing, or other commercial operation in the domiciliary State".

obligations under the DDA and DDO do not apply with regard to legal entities that are commercially active, in practice all trustees the assessors met stated that they would conduct customer due diligence also with respect to companies that are commercially active.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

659. With the exception of deposited Stiftungen, all legal entities incorporated in Liechtenstein obtain legal personality upon registration with the public register, which is maintained and administered by the GBOERA. Although the public register does not record information on beneficial ownership, it contains the names and addresses of Article 180a PGR directors. Furthermore, notarized copies of the founding documents and statutes have to be submitted upon registration.

660. In addition to the public registry, the GBOERA also maintains and administers information and documents pertaining to deposited Stiftungen, including copies of the founding statutes and deeds.

1. Information and documents pertaining to registered legal entities

661. Registered legal entities provide the GBOERA with information and underlying documents. The former may be accessed by the public. Pursuant to Article 953.4 PGR, however, founding documents, statutes and other records of certain forms of legal entities may only be accessed upon (1) establishment of a legitimate interest or (2) authorization by the legal entity concerned. Pursuant to Article 953.5 PGR and Article 6 SE-Gesetz, all documents pertaining to AG, KAG, GmbH and SE are fully accessible by the public. The legitimate interest test therefore only applies to statutes and documents pertaining to Anstalten, registered Stiftungen, registered trust deeds, trust enterprises, Anteilsgesellschaften, Genossenschaften, Versicherungsvereinen auf Gegenseitigkeit, and Vereinen.

662. To assert a legitimate interest, the requesting party has to make a written statement disclosing the capacity in which he/she is requesting access and give a reason for his/her interest. The registrar will then balance the stated interest against the legal entity’s interests and decide whether or not access may be granted in a specific case. The registrar’s decision may be appealed at the administrative courts.

663. In discussions with the registrar it was stated that three to four requests for access to documentation were received every month. As of the time of the on-site visit, no requests had ever been denied. It was further stated that the competent authorities would in all cases be considered to have a “legitimate interest”. The competent authorities confirmed that they had never experienced any difficulties in accessing registered documents.

2. Deposited documents

664. Pursuant to Article 990 PGR in connection with Articles 554 and 557 PGR, the GBOERA also keeps notarized copies of founding statutes pertaining to deposited Stiftungen.

According to Article 955a PGR, only depositors and persons authorized by the depositors may be granted access to deposited documents. In all other instances, access may only be granted upon court order pursuant to Article 10 StPO. However, law enforcement authorities, the FIU, and the FMA may be provided with the name and address of the representative of a deposited Stiftung pursuant to Article 91a OeRegV.

665. As of March 10, 2007, the GBOERA maintained information on 71,807 legal entities and arrangements. Of these, 42,651 or 60 percent were deposited trusts and foundations, compared to 29,156 or 40 percent registered entities and arrangements. Since December 2004 the number of registrations decreased by 2.4 percent, whereas deposited entities and arrangements increased by 8.5 percent.

Prevention of Misuse of Bearer Shares (c. 33.3):

666. Under Liechtenstein law, bearer shares in the form of Inhaberaktien (bearer shares), Inhaberpapiere (bearer instruments) or Treuhandzertifikate (trust certificates) may be issued by AG (Article 323 PGR), Genossenschaften (Article 447 PGR), Versicherungsvereinen auf Gegenseitigkeit und Hilfskassen (Article 508 PGR) and Stiftungen (Article 567.4 PGR in connection with Article 928.1 and 3 PGR). For some company forms the law limits the extent to which control powers may be transferred freely through bearer shares. In all cases, however, the shares entitle the bearer shareholder to benefit from the assets or the profit of the issuing legal entity. Whereas the PGR provides for an obligation to keep a register of nominal shareholders, such an obligation does not exist for bearer shares.

667. Representatives of the private sector stated that although for some company forms bearer shares would be used frequently, this was mainly due to the fact that the issuance of nominal shares was more expensive and more complicated. Even in cases where bearer shares were issued, the trustees would typically keep the shares and would not hand them out to their clients. Representatives of the private sector further stated that bearer shares would hardly ever be used in relation to Stiftungen. The authorities consider proposing an amendment to the PGR to require persons holding 25 percent or more of a company through bearer shares to disclose their identity to the company.

668. For legal persons commercially active in the domiciliary state, the law does not provide for concrete mechanisms to establish and record the identity of bearer shareholders. For legal persons not commercially active, the obligations under the DDA and DDO as outlined above also apply with regard to bearer shareholders through Article 180a PGR. Failure of directors pursuant to 180a PGR to comply with these obligations may result in criminal, administrative, and disciplinary sanctions.

Additional Element - Access to Information on Beneficial Owners of Legal Persons by Financial Institutions) (c. 33.4):

669. Financial institutions have full access to all information and documentation held at the registry and pertaining to AG, KAG, GmbH, and SE and to all information, but not underlying

documentation, related to Anstalten, registered Stiftungen, trust enterprises, Anteilsgesellschaften, Genossenschafter, Versicherungsvereinen auf Gegenseitigkeit, and Vereinen. Upon proof of a legitimate interest in such documentation in a specific case, however, the registrar may grant a financial institution access to such documentation. Furthermore, upon request, the GBOERA has to confirm whether a deposited foundation exists or does not exist. However, in the absence of a court order, financial institutions have no access to information on deposited Stiftungen.

Analysis:

670. For entities not commercially active, which account for almost 90 percent of all companies registered in Liechtenstein, Article 7.2.c DDA provides that trustees have to obtain beneficial ownership information. The provision seems to be complied with in practice, as all trust service providers the assessors met confirmed that they would routinely obtain information on the beneficial ownership. However, the following two shortcomings identified by the assessors in Section 3.2 also apply with regard to beneficial ownership and control information of legal persons:

- First, the definition of "beneficial owner" pursuant to Article 11 DDO is not in line with the definition in the FATF Recommendations, as it only covers persons that hold the economic rights to the legal entity's assets but does not extend to persons that hold control rights or interests, such as protectors/curators, nominee directors, or other persons that can comprise the mind and management of a legal entity. Article 10.4 requires identification of such persons but only with regard to legal entities that have no or only a class of designated beneficial owners;

- Secondly, the DDA and DDO do not explicitly require verification of beneficial ownership information. Although in practice, it seems that trust service providers verify beneficial ownership information to some degree due to the requirement to determine the economic background and origin of the assets, the legal obligations as defined in the DDA and DDO fall short of the requirement that beneficial ownership information has to be verified in all cases.

671. Through Article 180a PGR, the obligations under the DDA and DDO also apply to situations in which instruments such as nominee shareholders, nominee directors, protectors/collators, nominee founders, and bearer shares are being used by companies that are not commercially active. However, for the two reasons outlined above, the obligations under DDA and DDO cannot be considered sufficient to ensure that such instruments are not being misused for money laundering and terrorist financing purposes in all circumstances.

672. As outlined above, Article 180a PGR does not extend to companies that are commercially active in the domiciliary State; therefore, it is not mandatory for those legal persons to utilize the services of a professional trustee in the course of their formation or business. Whereas about 10 percent of all companies registered in Liechtenstein are commercially active, five percent of all

services provided by trustees relate to commercially-active companies. This would suggest that close to 50 percent of all commercially-active companies do in fact utilize trust service providers. Though under no legal obligation to do so, all trustees the assessors met stated that in practice they would obtain, verify, and record beneficial ownership information also for commercially-active companies. Furthermore, whenever a commercially-active company happens to conduct a financial transaction that is covered by the DDA or DDO, i.e., enter into a business relationship with a bank, beneficial ownership and control information is obtained, maintained, and verified as outlined in Section 3.2.

673. In cases where the competent authorities require information on a specific company, information kept at the GBOERA can be crucial for locating beneficial ownership information. For example, where a mutual legal assistance request does not indicate the name of a legal entity's director, registered information will provide the name and address of the director managing a legal entity. Based on this information, the competent authorities can locate the due diligence files which are kept and maintained by the relevant Liechtenstein trustee/director, and contain beneficial ownership information at least to the extent outlined above.

674. For registered entities, the PGR provides that competent authorities have full access to all published information, which includes information on a legal entity's directors or representatives. For deposited Stiftungen, the competent authorities do not have access to the founding instruments without a court order. However, they have an indirect means of accessing the information that is maintained on beneficial owners, as Article 91a OeRegV explicitly states that the FMA, the FIU, and law enforcement may be provided by the GBOERA with information on the representative(s) of a deposited Stiftungen. As explained in the above paragraph, based on this information, the authorities can locate the relevant trustee/director and beneficial ownership information even without access to the founding documents.

5.1.2 Recommendations and Comments

- The definition of "beneficial owner" should be amended and brought in line with the FATF standard to cover the control structure of legal persons.

- Intermediaries should be required by law to verify beneficial ownership information.

- Although in practice beneficial ownership information of commercially-active companies is available in a large number of cases, the authorities should put in place measures to ensure that information on beneficial ownership and control of legal entities that are commercially active in the domiciliary state is obtained, verified, and kept.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• The definition of "beneficial owner" does not extend to controllers of legal entities that do not hold an economic right to the legal entity's

		assets; therefore, there is no obligation to obtain, verify, and maintain information on such persons that ultimately control a legal entity; • Intermediaries are not required by law to verify beneficial ownership information; • No measures are in place to ensure that information on beneficial ownership and control of legal entities that are commercially active in the domiciliary state is obtained, verified, and kept in all cases.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):

675. Pursuant to Article 905 PGR, at least one trustee of a Liechtenstein trust has to be a natural or legal person domiciled in Liechtenstein. For the purpose of this section of the report, it has to be differentiated between trustees that act "on a professional basis" and those who act on a private basis. The former are required by law to hold a license pursuant to the Treuhaendergesetz (TrHG Act on Trustees) and are therefore also subject to the obligations under the DDA and DDO. In comparison, the latter do not fall under the scope of the TrHG and, accordingly, do not have to obtain and keep information on beneficial ownership pursuant to the obligations under the DDA and DDO. However, the authorities may use investigative powers to obtain beneficial ownership information in such cases. This section of the report will refer to the first group as "professional trustees" and to the second group as "private trustees".

676. As already stated above, professional trustees are subject to the obligations under the DDA and DDO. As discussed in Section 5.1.1 of this report, Article 7.2.c DDA provides that if the contracting party is a legal entity that does not operate commercially in the domiciliary State, such a written and signed statement in accordance with Article 3 DDO, disclosing information on the beneficial owner, has to be obtained in all cases.[39] Even though the definition of Article 4.2.c explicitly covers trusts, in practice legal arrangements cannot be commercially active due to their lack of legal personality. Accordingly, all trusts are considered "not commercially active" and Article 7.2.c DDA applies to all legal arrangements registered in Liechtenstein.

677. "Beneficial owner" is defined through Article 11 DDO as "those persons who ultimately hold the economic rights to assets in question". For legal arrangements that have no or only a class of designated beneficiaries, Article 10.4 DDO determines that information on persons authorized to instruct the trustee, curators, protectors, and other appointed persons has to be

[39] Article 4.2.c DDA provides that "a legal entity that does not operate commercially in the domiciliary State is, in particular, a legal person, company, trust, or other association or asset entity–regardless of its legal structure–that does not conduct any trade, manufacturing, or other commercial operation in the domiciliary State".

provided as well. Article 11 DDO determines that with regard to revocable trusts, the effective founder is considered the beneficial owner.

678. Protectors, letter of wishes, and flee clauses are permissible under Liechtenstein law. Representatives of the private sector stated that, unlike flee clauses, protectors and letter of wishes are used frequently by trust settlors. Within the scope of Articles 9, 10, and 11 DDA, professional trustees are under an obligation to obtain and keep information on the beneficial ownership.

679. While an exact or estimated number of "private" trustees in Liechtenstein could not be provided, the FMA stated that the number would be marginal, as those activities would typically only cover situations in which a person acts as a trustee for a friend or family member. According to the FMA, anybody who holds a mandate as trustee in more than three trust structures would always be considered to act on a professional basis. In cases where a person holds less than three mandates, the FMA would, on a case-by-case basis, determine whether or not a person is acting on a professional basis, taking into account the value of trust assets and the amount of compensation the trustee receives for each mandate. Every year, the FMA indicated that it receives approximately five requests for determination as to whether a person is acting on a private or professional basis. In about four out of those five cases, the FMA typically determined that an activity was carried out on a professional basis and that a license pursuant to the TrHG was required. Although the obligations under the DDA and DDO do not apply to "private" trustees as outlined above, the authorities may use investigative powers to obtain beneficial ownership information in such cases.

Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):

680. Trusts set up for a duration of more than 12 months have to be either registered or deposited if at least one trustee is domiciled in Liechtenstein. For registration, the name, date of establishment, and duration of the trust as well as name and address of all trustees has to be provided to the registry. A copy of the trust deed does not have to be submitted. All registered information is accessible by the public. Alternatively, a settlor may choose to deposit a notarized copy of the trust deed with the registry. According to Article 955a PGR, only depositors and persons authorized by the depositors may be granted access to deposited trust deeds. In all other instances, access may only be granted upon court order pursuant to Article 10 StPO. However, law enforcement authorities, the FIU and the FMA may be provided with the name and address of the representative of a deposited trust pursuant to Article 100a OeRegV.

681. As of March 10, 2007, 60 percent of all entries maintained by the GBOERA related to deposited Stiftungen and deposited trust deeds. The public registry could not provide clarification on the exact amount of deposited trust deeds versus deposited Stiftungen. However, the registrar stated that there was a clear preference for Stiftungen over trusts. Representatives of the private sector confirmed that trust deeds would usually be registered and not deposited, partly because registration would not require a submission of a notarized copy of the trust deed.

Prevention of Misuse of Bearer Shares (c.33.3):

682. According to Article 928 PGR in connection with Article 23 TrUG, trusts may issue bearer shares in the form of Treuhandzertifikaten (trust certificates). Whereas the law provides for trustees to keep a register of nominal shareholders, such an obligation does not exist for bearer shares.

683. Although the law does not provide for concrete mechanisms to establish and record the identity of bearer shareholders, for professional trustees the obligations under the DDA and DDO as outlined in paragraph 2 of Section 5.2.1. above also apply with regard to bearer shareholders. Failure of professional trustees to comply with these obligations may result in criminal, administrative, and disciplinary sanctions.

684. Representatives of the private sector stated that bearer shares in relation to trusts would rarely be used. Even in cases where bearer shares were issued, the trustees would typically keep the shares and would not hand them out to their clients. The authorities consider proposing an amendment to the PGR to require persons holding 25 percent or more of a company through bearer shares to disclose their identity to the company.

Additional Element - Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions)(c. 34.3):

685. Financial institutions have full access to all information held at the registry and pertaining to registered trusts deeds. If requested, the GBOERA would confirm to a financial institution whether a deposited foundation exists or does not exist. However, in the absence of a court order, financial institutions have no access to information on deposited trust deeds.

Analysis:

686. For all legal arrangements registered in Liechtenstein, Article 7.2.c DDA provides that trustees have to obtain beneficial ownership information. The provision seems to be complied with in practice, as all trust service providers the assessors met confirmed that they would routinely obtain information on the beneficial ownership. However, the following two shortcomings identified by the assessors in Section 3.2 of this report also apply with regard to beneficial ownership and control information of legal arrangements:

- First, the definition of "beneficial owner" pursuant to Article 11 DDO is not in line with the definition in the FATF Recommendation, as it only covers persons that hold an economic right to the trust assets but does not extend to persons that hold control rights or interests, such as protectors/curators, additional trustees, or other persons that can exercise effective control over a trust. It is also unclear whether in a trust arrangement, the trustee, as the legal owner, or the beneficiary, as the beneficial owner, or both would be considered to hold economic rights to the trust assets. Article 10.4 requires identification of such persons but only applies with regard to trusts that have no or only a class of designated beneficiaries.

- Secondly, as discussed in Section 3.2.1, the DDA and DDO do not explicitly require verification of beneficial ownership information. In practice, it seems that verification is obtained, at least to some degree, due to the requirement to determine the economic background and origin of the assets. However, the legal obligations as defined in the DDA and DDO fall short of the requirement that beneficial ownership information has to be verified in all cases.

687. Based on these two reasons, the obligations under the DDA and DDO cannot be considered sufficient in all circumstances to ensure that instruments such as protectors, letter of wishes, and bearer shares are not being misused for money laundering and terrorist financing purposes.

688. "Private" trustees are not subject to the obligations of the DDA and DDO as outlined above. However, it appears that only a very small number of such "private" trustees are active in Liechtenstein and that the number of legal arrangements administered by such persons is marginal. In addition, the authorities may use investigative powers to obtain beneficial ownership information in such cases. As "private" trustees typically manage trust assets for family members or friends, beneficial ownership information would be available in most cases.

689. In cases where the competent authorities require information on a specific trust, deposited information kept at the GBOERA can be crucial for locating beneficial ownership information. For example, where a mutual legal assistance request relates to certain trust assets but does not indicate the name of the trustee, registered or deposited information will identify the relevant trustee. Based on this information, the competent authorities can locate the due diligence files, which are kept and maintained by the relevant Liechtenstein trustee, and contain beneficial ownership information at least to the extent outlined above.

690. With regard to registered trusts, even though a copy of the trust deed does not have to be submitted, the name and address of all trustees has to be provided to the registry and is accessible to the public. For deposited trusts, the competent authorities do not have access to deposited trust deeds without a court order. However, they have an indirect means of accessing the information that is maintained on beneficial owners, as Article 100a OeRegV explicitly states that the FMA, the FIU, and law enforcement may be provided by the GBOERA with information on the trustee(s) of a deposited trust. As explained in the above paragraph, based on this information, the authorities can locate the relevant trustee and beneficial ownership information even without access to the founding documents.

5.2.2 Recommendations and Comments

- The definition of "beneficial owner" should be amended and brought in line with the definition of the FATF standard to ensure that there is adequate transparency concerning the control structure of legal arrangements.

- Intermediaries should be required by law to verify beneficial ownership information.

- Although the number of "private trustees" active in Liechtenstein seems to be marginal, such persons should be under a legal obligation to obtain, verify, and record beneficial ownership information.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**PC**	• The definition of "beneficial owner" does not extend to controllers of legal arrangements that do not hold an economic right in the trust assets; therefore, there is no obligation to obtain, verify, and maintain information on the natural persons that ultimately exercise effective control over a trust. • Intermediaries are not required by law to verify beneficial ownership information. • "Private trustees" in Liechtenstein are not under a legal obligation to obtain, verify, and record beneficial ownership information.

5.3 Non-profit organizations (SR.VIII)

5.3.1 Description and Analysis

Overview of sector.

691. There are reportedly over 600 legal persons or arrangements which have been organized with a non-commercial purpose, 222 of which have received tax-exempt status from the Inland Revenue Service. 198 of these tax-exempt organizations are foundations and 22 are associations (Vereine) and all must be registered, not deposited, in the Public Registry. However, the definition of noncommercial, that is, the basis for these figures is much broader than the FATF understanding of non-profit organization (NPO) as articulated in the Best Practice Paper and Interpretive Note. In particular, very few of these organizations—and reportedly none of those without tax-exempt status—collect funds from the Liechtenstein population and disburse them for "charitable, religious, cultural, education, social or fraternal purposes, or for carrying out of other types of 'good works'." Rather, most are mechanisms to manage the charitable bequests of individual donors or families or to provide a structure for the endowment of one or another Liechtenstein social welfare or cultural institution.

Legal Framework:

Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):

692. Liechtenstein has not undertaken a review of the adequacy of its NPO-related legal framework, although it is in the process of revising its foundation law, including changes that will improve government access to information on non-commercial foundations.

Preventative Measures Against Illegitimate NPOs (c. VIII.2):

693. The authorities report no comprehensive outreach to the NPO sector, but note that they have conducted seminars for covered entities that included information on the risk of the abuse of NPOs

Diversion of Funds for Terrorists Purposes (c. VIII.3):

694. All legal entities in Liechtenstein—including those with a non-commercial purpose—will have a statement of purpose in their founding documents. The type and level of information maintained will depend on the organization form chosen, but should always include the information required in the standard. Access to this information will also vary and deposited non-commercial foundations are highly nontransparent (see Sections 1, 5.1, and 5.2). At a minimum, all tax-exempt NPOs, regardless of form, would have to file this information with the tax-authorities.

695. One interesting side-effect of the Liechtenstein focus on "organizations that do not operate commercially in the domiciliary state" is that all non-commercial legal entities (although not trusts) would have to comply with Article 180a PGR and, therefore, would have a director who was subject to the DDA. This would require the director to maintain a due diligence file on that entity, keep records, and monitor transactions.

696. The tax authorities can revoke tax-exempt status if they find that the organization is not living up to its purpose. The Courts also have jurisdiction over registered, not deposited, entities and can sanction those whose actions deviate from the purpose established in the founding documents.

697. All tax-exempt NPOs must be registered. Many of the other non-commercial foundations could be deposited and therefore not easily accessible to the authorities. Proposed changes to the foundation law are intended to give access to key information about deposited non-commercial foundations, but they are still in preliminary stages of discussion.

698. Tax-exempt NPOs have to present annual balance sheets to the tax authorities and all non-commercial organizations that fall under the DDA would have to monitor transactions and keep records on them.

Criterion VIII.4

699. Domestic cooperation and sharing of information concerning investigations of possible terrorist financing through NPOs would follow the same system as described in Section 6.1 of this report. One potential concern is that Article 6 FIU does not specify terrorist financing as an area where the FIU is required to provide information to other government agencies.

Criterion VIII.5

700. International cooperation concerning terrorist financing through NPOs would follow the same system as described in Sections 6.2-6.5 of this report.

5.3.2 Recommendations and Comments

- Liechtenstein should conduct a review of its NPO laws and regulations
- Liechtenstein should conduct outreach with the NPO sector on the risks of FT abuse.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• Review needed of Liechtenstein's NPO laws and regulations; • Insufficient outreach to the NPO sector on FT risks.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31)

6.1.1 Description and Analysis

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):

701. Article 36 DDA specifically provides for cooperation between domestic authorities, in the sense that "the Liechtenstein authorities, in particular the courts, the Office of the Public Prosecutor, the FMA, the FIU, the National Police, and other authorities responsible for combating money laundering, organized crime, and the financing of terrorism are required to provide all information and transmit all records to each other that are necessary for the enforcement of this Act". On the FIU rests also an obligation to cooperate with the Liechtenstein authorities in the combat against ML and FT, on condition that this does not interfere with "the discharge of its responsibilities" (Article 6 FIU Act).

702. A similar cooperation obligation is imbedded in Article 10 StPO ensuring the cooperation of all State and local authorities with the judicial authorities in criminal matters. All civil servants are expected to report all suspicions of any offense to the Public Prosecutor or the police (Article 53 StPO)

703. Furthermore, Article 25 LVG is the general provision for all Liechtenstein authorities. The administrative authorities (officials) and organs of the State and the municipalities as well as the courts must render mutual assistance to each other when undertaking or executing administrative acts (administrative cooperation, administrative assistance), whether such assistance is otherwise legally stipulated or not.

704. In practice this cooperation translates itself in the first place in the relevant authorities assisting each other in concrete cases, where particularly the investigating judge, the Public Prosecutor, police, FIU, and FMA interact. MLA-related information is always copied to the Public Prosecutor and the FIU. The Public Prosecutor routinely informs the FMA of all due diligence cases and questions.

705. In the context of FT, there is the Terrorism Financing Coordination Group with the participation of the Public Prosecutor, police, the Foreign Office, FIU, and the registrar, under the chairmanship of the Head of the FIU, to address anti-terrorism issues, especially UN resolution-related measures and frozen assets, which was the case, for example, with the EU Regulation and the U.S. OFAC list.

706. Additional Element - Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2):

707. Every regulation and law drafting is preceded by a consultation procedure, involving the authorities, professional associations, and financial market practitioners. The FMA acts in a

similar way when drafting the ordinances and guidelines. The FMA issues guidelines concerning indicators for money laundering in consultation with the FIU (Article 23.3 DDO).

32.1 National ML/FT effectiveness review

708. Four times a year there is a meeting between the law enforcement authorities, the investigating judges, the FMA, and the FIU on case-oriented issues and on policy coordination. This would also include issues relating to the improvement of the effectiveness of the system.

Analysis

709. The cooperation and coordination between the domestic authorities is well organized and effective. The small size of the country, the familiarity factor, and the close operational connections between the different players facilitate this process.

6.1.2 Recommendations and Comments

None

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**C**	**—**

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Ratification of AML Related UN Conventions (c. 35.1) :

710. Liechtenstein's practice is to ratify a convention only after all provisions that must be implemented are reflected in Liechtenstein law.

Vienna Convention

711. Liechtenstein signed the Vienna Convention and ratified it on March 9, 2007. Liechtenstein has implemented most of the Convention's provisions as applicable to the FATF Recommendations. However, the conspiracy of two persons to commit drug-related money laundering is not criminalized. The assessors were further concerned about the extensive possibilities for appeals in relation to mutual legal assistance and extradition requests relating to money laundering. However, in practice, the extradition procedure has not given rise to excessive delays yet. Articles 15, 17, and 19 of the Convention are not fully complied with, as Liechtenstein does not have a system in place to detect the cross-border movement of currency and bearer instruments.

Palermo Convention

712. Liechtenstein signed the Palermo Convention on September 16, 2005. Ratification is expected in the fall of 2007. The assessment team found that most provisions of the Convention have already been implemented through domestic law. However, the conspiracy of two persons to commit the offense of money laundering is not criminalized. Self-laundering is only criminalized in very limited circumstances and the criminal code does not provide for corporate liability.

CFT Convention

713. Liechtenstein has signed the UN Convention for the Suppression of the Financing of Terrorism and ratified it on July 9, 2003. The StGB, however, does not criminalize the financing of individual terrorists and conspiracy to commit a terrorist financing offense is not covered by the offense. The definition of terrorist organization is not in line with the definition as contained in the Convention. As the financing offense does not fully meet the scope of the offense as contained in the Convention, the requirement of dual criminality may therefore pose an obstacle for extradition in terrorist financing matters. The Liechtenstein extradition regime, as laid down in the RHG, excludes extradition for political offenses. As described in Section 6.2 of this report, the obligations for the implementation of UNSCR 1373 are not fully complied with.

714. Liechtenstein has signed and ratified 12 out of the 13 international legal instruments that play an integral part in the global fight against terrorism. The last instrument, the International Convention for the Suppression of Acts of Nuclear Terrorism, was signed on September 16, 2005 and ratification is expected in 2008. Liechtenstein has fully implemented UNSCR 1267.

Implementation of UNSCRs relating to Prevention and Suppression of FT (c.I.2)

715. The Taliban Ordinance of October 10, 2001 implements the obligations as formulated by UNSCR 1267 (1999) and its successors, more specifically on the freezing procedure of relevant assets, the object of the freezing measure (definition of funds and other assets) and access to the frozen funds. The de-listing procedure is addressed in the FMA Circular 1/2007. Only a clear reference to the indirect control or ownership is absent in the implementing texts, as noted in Section 2.4.1 above.[40]

716. As for UNSCR 1373, there is a general possibility of freezing terrorist-related assets and a comprehensive CFT preventive system in place under the DDA regime. International cooperation and information exchange at administrative and judicial level is actively pursued. Criminalization of terrorism financing is, however, deficient, as noted in Section 2.2.

[40] UNSCR 1267 reference to the extent of the freezing measure does not include “wholly or jointly” forms of ownership or control.

Additional Element - Ratification or Implementation of Other relevant international conventions (c. 35.2):

717. Liechtenstein has signed the UN Convention against Corruption and ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and the Protocol amending the European Convention on the Suppression of Terrorism.

6.2.2 Recommendations and Comments

- The authorities should ensure that all provisions of the Palermo and Vienna Conventions are fully implemented.
- The authorities should ensure that all provisions of the United Nations International Convention for the Suppression of Financing of Terrorism are implemented.
- Implementation of the relevant UNSCRs needs further refining to expressly cover the assets under the indirect control or ownership of terrorists, and to fully criminalize terrorism financing.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• Liechtenstein has not ratified the Palermo Convention. • Liechtenstein has not fully implemented all provisions of the Palermo and Vienna Conventions.
SR.I	**PC**	• Liechtenstein has not fully implemented all provisions of the United Nations International Convention for the Suppression of Financing of Terrorism. • Implementation of UNSCR 1267 and UNSCR 1373 is incomplete.

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

718. All rules relating to Liechtenstein's ability to provide mutual legal assistance equally apply to cases involving money laundering or terrorist financing.

Widest Possible Range of Mutual Assistance (c. 36.1):

719. Mutual legal assistance in Liechtenstein is generally governed by the extensive Law on International Mutual Legal Assistance in Criminal Matters (Rechtshilfegesetz; hereafter: RHG), in force since November 6, 2000. It is inspired by the European Convention on Mutual Assistance in Criminal Matters (hereafter: ECMA, ETS 030) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Money Laundering Convention, ETS 141), and allows for effective mutual legal assistance by streamlining procedures and reducing the possibility for delaying tactics. The RHG provides for a clear articulation of the

respective responsibilities of the administrative authorities and of the judiciary in legal assistance matters.

720. Assistance to other States is also granted on the basis of bilateral mutual legal assistance agreements and multilateral treaties to which Liechtenstein is party (such as the ECMA). Ad hoc cooperation is governed by the RHG, which organizes legal assistance to all states with which no specific mutual legal assistance agreement has been concluded.

Provision of Assistance in Timely, Constructive, and Effective Manner (c. 36.1.1):

721. The vast majority of the incoming requests (some 95 percent) go to the Ministry of Justice, if not directly to the Public Prosecutor or the Court. Only those requests that are not governed by the ECMA or the treaties with Austria, Germany, Switzerland, or the USA, go through the diplomatic channels.

722. With the revision in 2000 of the Mutual Legal Assistance Act and accompanying amendments in the StPO, the possibilities to appeal against MLA and extradition court decisions have been substantially reduced by cutting off the administrative appeal route for these matters. Now only the extensive, but usual criminal procedure channels for challenging judicial decisions are available. This means that any court order can be subject to three instances of appeal: the Court of Appeal, Supreme Court, and Constitutional Court. A further restriction of the appeal procedure is the rule that mutually-consistent decisions of the Court of Justice (first instance) and the Court of Appeal can no longer be submitted to the Supreme Court (Article 238.3 in conjunction with Article 240(4) StPO). They can, however, still be challenged on constitutional grounds before the Constitutional Court (such as on the ground of the fundamental right to privacy). It is particularly the Constitutional Court procedure that can have a substantial delaying effect, because of the backlog of pending cases (a delay of nine months was said not to be abnormal).

723. On the other hand Article 52.5 RHG creates the possibility of a simplified procedure, allowing objects and records to be directly transmitted to the requesting foreign authority without further procedure, as long as the persons concerned agree and subject to the third parties' right (Article 55.4 RHG).

724. Judging from the statistical data supplied by the Ministry of Justice, most of the MLA requests are processed in two to four months. Some of them have taken more than two years however (six in 2003 and three in 2004). Maximum processing time in 2005: two years (two requests); in 2006: one year (two requests).

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

725. The general principle governing the MLA regime is reciprocity, as provided in Article 3 RHG.

726. Article 51 RHG lists the specific grounds for refusing legal assistance:

- the dual criminality condition is not met;
- the request relates to a criminal offense of a political, military, or fiscal nature (Article 14 and 15 RHG);
- the request is based on proceedings that do not meet the basic principles of Articles 3 and 6 of the European Convention on Human Rights (ECHR) (e.g. torture);
- the sentence or enforcement of preventive measures goes against the basic human rights (Article 5 ECHR e.g., death penalty);
- the specific StPO conditions for confiscation or special investigative techniques (tapping, opening mail) have not been met;
- the secrecy obligation cannot be lifted even by a Liechtenstein court decision (e.g. medical secret, lawyer's legal privilege). The banking and other financial secrecy does not fall under this category.

Efficiency of Processes (c. 36.3):

727. Any foreign legal assistance request usually follows the same procedure:

- the MLA request is addressed to the Ministry of Justice (as "Central Authority" according to the 1990 Strasbourg Convention), or directly to the judicial authorities;
- the request is passed to a judge at the Court of Justice who, after a marginal examination, decides whether or not the assistance should be granted;
- all MLA requests are copied to the Office of the Public Prosecutor for possible comments;
- requests related to money laundering, predicate offenses, or FT are copied to the FIU; (Article 7.1 FIU Act).

The ECMA and Article 1 RHG allow for direct transmission of legal assistance requests in the cases provided in Article 15.2 and 4 ECMA (urgency). In practice, the judicial authorities have in the past accepted directly-addressed MLA requests even when involving coercive measures.

728. The Court examines the request predominantly in the light of its admissibility, i.e., whether the basic legal conditions are met and no grounds for refusal exist (such as the dual criminality requirement for coercive actions and the fiscal exception - Article 51 RHG). The Court's examination is a marginal one, i.e., it does not go over the substance of the case (such as the evidentiary value of the facts), but it does look into the comprehensiveness of the request to assess whether it contains enough information to be able to comply in a meaningful way. Any refusal of the request can be subject of an appeal by the Public Prosecutor. If the Court deems the request admissible it executes it by questioning witnesses, obtaining documents and bank

records, or issuing a search warrant. Those searches are conducted by the National Police Authority.

729. In the case of an MLA request relating to seizure and transmission of objects, documents, or records, a separate decision is made according to Article 55.4 RHG identifying the items that are to be handed over to the requesting authority, in which case appeal is also possible. Such appeals are usually based on fiscal exception arguments, the case allegedly having a civil nature, or on purely procedural grounds. The court order overrules any banking or professional secrecy and all documents and items must be handed over to comply with the request.

730. Once the legal assistance proceedings are concluded, the materials to be surrendered are transferred to the Ministry of Justice, who is responsible for forwarding them to the requesting foreign authority, directly or through diplomatic channels (mainly via the Liechtenstein Embassy in Berne). With Switzerland and Austria and in urgent cases, the materials are sent directly to the requesting authority.

731. The time needed to comply with an MLA request depends on the complexity of the request. An overview of the MLA requests received between 2003 and 2006 shows that in most cases it takes between two and four months to execute. Some, however, take two years and more (see 36.1.1 above).

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

732. MLA requests relating to facts that are "exclusively" qualified as fiscal offenses under Liechtenstein law (as well as violations of provisions relating to taxes, monopolies, customs, or foreign currency, or provisions relating to the movement of goods or foreign trade) cannot be complied with because of the express prohibition of Article 15.2 and 51 RHG. The exclusivity only affects the fiscal offense. In case of MLA requests concerning mixed offenses (fiscal and others), legal assistance is given for the common criminal law offense. In that case, the legal assistance results will be returned to the requesting authority, subject to a "reservation of specialty" that limits their use to the sole prosecution of the common offense. So in practice, only those requests are refused that relate exclusively to fiscal offenses. It is interesting to note, however, that tax-related requests for legal assistance under Article 1.4 of the bilateral Mutual Legal Assistance Treaty with the U.S. (LGBl. 2003 No. 149) and according to Article 10 of the Agreement with the EU on savings taxation (LGBl. 2005 No. 111) make an exception to the rule and are complied with. As before, it is still standard practice to refuse MLA in cases of serious and organized fiscal fraud, such as VAT carousels.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

733. Banking secrecy cannot be opposed to an MLA request. Firm jurisprudence is established in that banking secrecy can, in principle, be waived in domestic and legal assistance criminal proceedings for common offenses.[41] Banking secrecy is lifted by a court order or an order issued

[41] See decision of the Court of Appeals of August 30, 1989, RS.1989.181-ON 9.

by an investigating judge. The exception formulated in Article 51.3 RHG cannot be interpreted as allowing a refusal of legal assistance on the grounds of banking secrecy (see 36.2). Articles 96, 97, 97a, 98, and 98a StPO regulating seizure apply.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6): See 36.1

Avoiding Conflicts of Jurisdiction (c. 36.7):

734. Coordination at domestic level is organized by allocating related legal assistance proceedings and domestic criminal proceedings to the same judge, who is responsible for communicating and coordinating with the foreign requesting jurisdiction(s). This also goes for the Office of the Public Prosecutor, where one and the same prosecutor is responsible for both the legal assistance and domestic criminal proceedings.

735. Transfer of prosecution or of enforcement (meaning seizure and confiscation) to foreign judicial authorities with the purpose of coordinating the proceedings in Liechtenstein and abroad, is a regular practice. Liechtenstein has also spontaneously forwarded information on criminal proceeds on the basis of Article 10 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141), in force in Liechtenstein since March 1, 2001.

736. Article 59 RHG allows foreign judicial and law enforcement authorities to participate in the execution of the MLA request on Liechtenstein territory, which occurs frequently and is a commendable practice, particularly in complicated cases and with MLA requests involving several states.

Additional Element – Availability of Powers of Competent Authorities Required under R28 (c. 36.8):

737. Police to police requests through the Interpol channel normally only allow for communication of information or intelligence, not for incisive investigation. With the consent of the involved or targeted person, however, some non-coercive investigative acts are not excluded, such as taking a statement.

Statistics of the National Police on Administrative Assistance relating to Money Laundering or Terrorist Financing 2003-2006

1. Received requests for administrative assistance relating to money laundering

	2003	2004	2005	2006
Requests from foreign countries	61	62	36	26

738. Where a fiscal (tax) background was clearly apparent from the request, such cases were deducted from the total number of the cases registered in the ABI and listed accordingly in the table above.

2. Submitted requests for administrative assistance relating to money laundering

	2003	2004	2005	2006
Requests to foreign countries via Interpol	20	13	9	11

739. The above table only registers the money laundering requests that were transmitted to foreign countries via Interpol. Statistics on other requests sent abroad are not compiled by the National Police.

3. Financing of terrorism

740. Article 278d StGB has been in force in Liechtenstein since December 10, 2003. The National Police has so far not been confronted with such cases.

International Cooperation under SR.V (applying c. 36.1-36.6 in R. 36, c. V.1): See above

Additional Element under SR.V (applying c. 36.7 & 36.8 in R.36, c. V.6): See above

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

741. Dual criminality is the general and formal rule governing the MLA procedure according to Article 51.1 RHG. Exception is made for non-coercive actions requested by signatories to the European Convention on MLA (Article 5 ECMA). But outside of the signatories, dual criminality is in principle required for all requests.

742. Approximately 95 percent of all legal assistance requests received by Liechtenstein originate from states that are party to the ECMA. The remaining relate primarily to requests from the U.S., with which Liechtenstein has concluded a bilateral Mutual Legal Assistance Treaty on July 8, 2002 (LGBl. 2003 No. 149) containing a specific provision on dual criminality (Article 1.3), which is not made a condition for non-coercive measures and where the parties commit themselves to show flexibility (e.g. Article 1.4. on tax fraud).

International Cooperation under SR.V (applying c. 37.1-37.2 in R. 37, c. V.2): See above

Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1):

743. Mutual legal assistance on confiscation and conservatory measures are governed by Articles 50 to 52 and 64 to 67 RHG. Foreign confiscation orders can be directly executed without the need to repeat the procedure, except for an exequatur decision of the Court. Provisional and conservatory measures are also taken upon request and will normally be followed by a domestic separate (civil) forfeiture procedure, if so requested. These forfeiture proceedings are possible for all crimes (Articles 350–357 StPO).

744. Implementation of foreign seizure and confiscation orders is governed by the 1990 Strasbourg Convention, as transposed in the StGB and StPO. The investigating judge plays a decisive role in this procedure.

745. Unless otherwise provided in the MLA Act, the StPO (see above on R.3) applies mutatis mutandis to the seizure and confiscation-related MLA processes (Article 9.1 RHG):

- Tracing and identifying criminal proceeds or other items subject to confiscation held by banks and financial institutions is ordered according to Article 98a StPO;
- In other cases a search is conducted (Article 92 StPO) and seizure of all values and items subject to confiscation is effectuated on the basis of Article 96 StPO;
- Article 97a StPO specifically provides for seizure of criminal proceeds, assets of criminal or terrorist groups or related to terrorism financing; and
- Forfeiture follows the regime of Articles 20 StGB (Abschöpfung), 20b StGB (Verfall), and 26 StGB (Einziehung).

746. If necessary, in rem forfeiture proceedings can be initiated according to Articles 353 to 357 StPO.

Property of Corresponding Value (c. 38.2):

747. As Article 20 StGB generally provides for confiscation by way of an order to pay an amount equal to the proceeds generated by criminal activity, it can also be used as basis for the execution of foreign equivalent value orders. Equally, seizure of all assets, tainted or not, can be ordered to comply with a foreign equivalent-value seizure request on the principle that anything that may be subject to confiscation can be seized (Article 96 StPO).

Coordination of Seizure and Confiscation Actions (c. 38.3):

748. The Ministry of Justice in Liechtenstein is the "central authority" for purposes of the 1990 Strasbourg Convention, and coordinates matters in consultation with the judicial authorities. The investigating judges have adopted the (best) practice of informing the requesting authority immediately by fax of the receipt of the legal assistance request. Communication between the local and foreign authorities involved happens directly as a rule.

749. MLA requests involving several foreign jurisdictions are not uncommon in Liechtenstein and require an organized and coordinated approach. One way of achieving this is executing the request in the presence of law enforcement officers from the involved jurisdictions, which frequently happens. This has the effect of speeding up the procedure and ensuring full implementation.

International Cooperation under SR.V (applying c. 38.1-38.3 in R. 38, c. V.3): See above

Asset Forfeiture Fund (c. 38.4):

750. Liechtenstein does not have an asset forfeiture fund and has not taken this issue into serious consideration. It is worth noting, however, that, even if Liechtenstein does not currently have a proper asset forfeiture fund, it has in the past (co-)financed various international

organizations and initiatives, such as UNODC (Global Programme against Money Laundering [AD/GLO/97/B/79], Global Programme against Terrorism [FS/GLO/02/R35], Alternative Crops – Afghanistan [AFG/G76], etc.), UNICEF and the Global Fund to Fight HIV/AIDS, with money from forfeiture actions.

Sharing of Confiscated Assets (c. 38.5):

751. On the other hand, the sharing of confiscated assets has become a feature in the international cooperation system in Liechtenstein since the Criminal Procedure Code amendment in 2000 (Article 253a StPO).

752. Because the criminal assets detected in Liechtenstein mostly originate from foreign predicate activity, the authorities have adopted a policy to allocate confiscated amounts to both the victims of the crime and the countries where the predicate offense occurred, if that country so requests. There have been 12 instances of asset sharing since 2000, totaling some CHF10.74 million and USD13.25 million allocated to other jurisdictions.

Additional Element (R 38) – Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):

753. To the extent that the foreign forfeiture decisions have been made in proceedings formally corresponding to Articles 353 to 357 StPO, i.e., in proceedings that are separate from the actual criminal proceedings but which Liechtenstein understands to be proceedings under criminal law, execution is possible if the other conditions of Article 64 et seq. RHG are met. In short, decisions made in purely administrative proceedings or proceedings which Liechtenstein would consider to be purely under civil law would not be enforceable. Civil in rem confiscations relating to criminal activity on the other hand are acceptable.

Additional Element under SR.V (applying c. 38.4-38.6 in R. 38, c V.7): See above

Statistics (applying R.32):

754. The following statistics were provided:

1. Statistics on seizure-related MLA requests

	Blocking of accounts	**Seizure of documents**
2003	27	88
2004	36	117
2005	38	105
2006	26	75

These figures relate to both foreign and domestic seizure orders. No statistics were provided on execution of confiscation orders although, as the figures below on asset sharing indicate, some foreign confiscation orders have been implemented.

2. Statistics on sharing agreements since December 19, 2000

Date of the Government decision	Government decision (RA) number	File number	Sum of the amounts declared confiscated or forfeited in Liechtenstein (rounded)	Share of the values made available to foreign countries (rounded)	Liechtenstein share (rounded) (+ amount for covering Liechtenstein procedural costs)
October 24, 2001	2001/3002	6 UVE 1/96	CHF3,353,369	CHF1,676,684 (for USA)	CHF1,676,685
May 28, 2002	2002/1271	12 Rs 2001.125	CHF65,013	CHF32,506 (for CH)	CHF32,507
May 28, 2002	2002/1337	12 Rs 2001. 157	CHF87,846	CHF43,923 (for D)	CHF43,923
May 21, 2003	2003/1210	14 Rs 2002.141	USD806,027	USD400,000 (for USA)	USD400,000 (+US$ 6,027)
May 21, 2003	2003/1312	14 Rs 2002.205	CHF1,018,778	CHF509,389 (for CH)	CHF509,389
October 22, 2003	2003/2728	UR 2002.66; KG 2001.63	USD 27,886,034	USD12,500,000 (for USA)	USD12,500,000 (+USD886,034) + USD2,000,000 for the support of projects combating the international drug trade and eliminating the consequences of narcotics crime
November 10, 2004	2004/2712	8 UVE 1998.4	USD287,588	USD125,000 (for USA)	USD125,000 (+ US$ 37,588)
June 8, 2005	2005/1309	12 RS. 2004.197	CHF93,490	CHF45,000 (for USA)	CHF45,000 (+CHF3,490)
December 14, 2005	2005/3083	11 RS 2005.172 (+ other predicate offenses)	CHF3,250,587	CHF1,620,000 (for USA)	CHF1,620,000 (+ CHF10,587)
June 13, 2006	2006/1046	11 UR.2005.181; 01 KG.2005.9	CHF6,413,769	CHF6,413,769 (for Nigeria)	CHF0 (+ CHF0)
September 6, 2006	2006/2200	14 UR 2001.245; 01 KG 2004.20	CHF782,227	CHF350,000 (for USA)	CHF350,000 (+ CHF82,227)
September 6, 2006	2006/2204	12 RS 2005.246	CHF106,918	CHF50,000 (for CH)	CHF50,000 (+ CHF6,918)

Analysis – R.36

755. With the introduction of the MLA Act in 2000, the mutual legal assistance situation changed dramatically from a notoriously difficult reputation to a disposition of rendering

maximum assistance. This willingness is demonstrated in the range of assistance that is being offered and the substantial reduction of the appeal procedure possibilities, even if they still give a lot of opportunity for delaying procedures. This is particularly so with the possibility to take the case to the Constitutional Court, even if it has passed all three instances before. This seems quite unique in Europe.

756. The refusal grounds are not excessive and universally accepted, except for the fiscal exception that is still too extensively interpreted: serious and organized robbery and fraud by way of fiscal means, such as VAT carrousels where the fiscal aspect is completely subordinated to the main purpose of robbing society, still profit from the amnesty Liechtenstein provides for fiscal offenses. It is definitely a good sign that an amendment is pending in parliament to exclude such fraudulent activity from the fiscal exemption.

757. Wherever dual criminality is a prerequisite, mutual legal assistance can be negatively affected by the deficiencies in the money laundering and terrorism financing offenses, as provided in the StGB (see comments R.1 and SR.II).

758. It must be acknowledged, however, that MLA requests usually receive an effective and quite extensive response, according to the statistical data supplied by the Ministry of Justice:

1. Liechtenstein requests for legal assistance

Year	Number
2006	397
2005	458
2004	576
2003	314

2. Offences involved in the legal assistance requests to foreign jurisdictions

Offense	Number
Fraud	91
Money laundering	53
Offense relating to documents	33
Misappropriation	32
Criminal breach of trust	25
Bribery	17
Breach of the Road Traffic Act	14
Criminal group/organization	12
Various bankruptcy offenses	11
Breach of the Narcotics Act	11

3. MLA requests to Liechtenstein

Requesting States

Country	Number of requests
Switzerland	92
Austria	43
Germany	42
Italy	7
USA	7
Netherlands	5
Poland	5
France	4
Great Britain	4
Czech Republic	4

Details

	Requests	Blocking of accounts	Seizure of documents	Refusals
2003	270	27	88	6
2004	282	36	117	4
2005	267	38	105	8
2006	224	26	75	9

759. Of the 27 refusals in the last four years, 14 were on fiscal alibi grounds. Other grounds were incomplete information, no dual criminality, civil case, and one political offense.

Analysis – R.37

760. The dual criminality principle is applied in a correct way and in most cases waived for non-coercive requests.

Analysis – R.38

761. There is ample legal arsenal to comply with seizure and confiscation-related MLA requests. The remarks on the absence of criminal confiscation of the object of the money laundering offense are irrelevant in the MLA context, as in this case Article 20b.2 is specifically designed for such events and the in rem procedure will be used. So all items that should be subject to seizure and confiscation are also covered in the MLA context. Some reservation must be made, however, if the request would relate to instrumentalities, which under the Article 26 StGB regime are only subject to confiscation to a very limited extent. In principle this may also

limit the MLA possibilities, although it must be recognized that such occurrence is rather theoretical.

762. As for the establishment of an asset forfeiture fund, the prosecution authorities were of the opinion that it would not be worthwhile. It is indeed a question if the existence of such a fund would really make a lot of difference. Most assets are seized and forfeited at foreign request and transferred to or shared with the foreign jurisdictions. The amount of confiscated assets and values in domestic cases was not deemed very high, although no figures were provided. Most of the money is apparently absorbed by compensation of the victims (civil parties) according to Article 20a and c StGB anyway. However, the involved authorities plan to submit proposals to the government for consideration and decision.

763. The statistical data show extensive interaction with foreign authorities in the area of asset recovery, and a positive attitude of Liechtenstein towards sharing assets with other jurisdictions.

6.3.2 Recommendations and Comments

R.36

- The legislator should endeavor to find a solution for possible excessive delays caused by delaying tactics before the Constitutional Court;
- Serious and organized fiscal fraud should be excluded from the fiscal exemption;
- The deficiencies in the ML and FT offense should be remedied to enable full compliance with dual criminality-ruled requests.

R.38

- The limited confiscation possibility for instrumentalities, also relevant in the MLA context, should be addressed;
- The government should decide on the desirability of establishing an asset forfeiture fund.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**PC**	• Excessive delays still possible by extensive means of appeal; • No MLA for serious and organized fiscal fraud; • Deficiencies in ML and FT may negatively impact on dual criminality ruled MLA.
R.37	**C**	—
R.38	**LC**	• Restricted confiscation for instrumentalities also in MLA context; • No consideration of asset forfeiture fund.
SR.V	**PC**	• Excessive delays still possible by extensive means of appeal; • Deficiencies in ML and FT may negatively impact on dual criminality. ruled MLA Restricted confiscation for instrumentalities also in MLA context.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

Legal Framework:

764. All rules relating to Liechtenstein's ability to extradite equally apply to cases involving money laundering or terrorist financing.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

765. See R.37 above for discussion of dual criminality.

Money Laundering as Extraditable Offense (c. 39.1):

766. Extradition is primarily governed by the European Convention on Extradition (ECE), in force in Liechtenstein since 1970, and by the RHG as a complement to that Convention for the non-ECE committed States. The most important rules are:

- Extradition is not conditional on the existence of a bilateral treaty and can be granted on an ad hoc basis;
- Dual criminality is a general condition (Article 11 RHG);
- No extradition is possible for political offenses (except if the criminal aspect outweighs the political – Article 14 RHG), and offenses of an exclusive military and fiscal nature (Article 15 RHG);
- The offense must not be elapsed because of the statute of limitation rules in either country (Article 18 RHG); and
- The specialty of the extradition must be observed (no prosecution for offenses other than those for which the extradition has been granted – Article 23 RHG).

767. Article 2.1 ECE provides that extradition shall be granted in respect of offenses punishable under the laws of the requesting State and of the requested State by deprivation of liberty for a maximum period of at least one year or by a more severe penalty. If the extradition is not governed by the ECE, then Article 11.1 RHG requires that the offense has been committed willfully. The offenses of money laundering (Article 165 StGB), participation in or support of a terrorist group (Article 278b StGB), terrorist activities (Article 278c StGB), and of terrorism financing (Article 278d StGB) meet all of these conditions, and are all extraditable offenses.

Extradition of Nationals (c. 39.2):

768. According to Article 12.1 RHG a Liechtenstein citizen may be extradited to another State or transferred for purposes of prosecution or enforcement if the person, upon being informed of the consequences of his declaration, expressly consents.

769. In all other cases Article 60 RHG authorizes "passive" transfer of prosecution, i.e., transfer of foreign prosecutions to Liechtenstein, if:

- there are sufficient grounds for prosecution;
- there is reciprocity (Article 3.1 RHG);
- there is jurisdiction over the offense in Liechtenstein; and
- the behavior is also an offense in Liechtenstein (Article 65 StGB).

770. In the last four years 33 requests for taking over the foreign prosecution have been addressed to Liechtenstein. 25 of them were effectively taken over (see statistics). The grounds for refusal of the other requests seem justified.

Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):

771. Article 60 RHG gives the Ministry of Justice the key role of liaising with the foreign authorities to collate all relevant facts and figures, including requesting additional information or documents, in order to ensure that the case can be effectively pursued in Liechtenstein. The Office of the Public Prosecutor has its own channels of communication with its foreign counterparts for that purpose. The possibility of transferring prosecutions is actively used in Liechtenstein, but in the reverse direction.

Efficiency of Extradition Process (c. 39.4):

772. In practice, almost all requests for extradition are transmitted between justice ministries, not through the more laborious and time-consuming diplomatic channels.

773. Simplified extradition procedures according to Article 32 RHG, based on the consent of the extraditable person, take just a matter of days. The ordinary extradition procedures take substantially more time. The use of the full arsenal of appeal possibilities is not uncommon in the different stages of the extradition procedure, starting with the provisional arrest of the person to be extradited, to the High Court recommendation. The final decision of the Government (i.e., the Minister of Justice) is, however, not open to legal challenge (Article 77.1 MLA).

Additional Element (R.39) – Existence of Simplified Procedures relating to Extradition (c. 39.5): See 39.4

Additional Element under SR.V (applying c. 39.5 in R. 39, c V.8) – See 39.4

Statistics (applying R.32):

774. No extradition requests have been submitted to or made by Liechtenstein so far related to money laundering and terrorist financing or terrorist activities.

775. The Ministry of Justice supplied the following statistical data on extraditions in general:

- Extradition cases since 2003 in total: 38, including:

2003	2004	2005	2006
5	8	8	14

- Incoming requests from abroad: 23, including:

2003	2004	2005	2006
3	5	4	9

- Outgoing requests to foreign countries: 15, including:

2003	2004	2005	2006
2	3	4	5

(In almost every case the concerned person gave his consent to the extradition.)

- Extraditions refused by Liechtenstein:

2004: - in one case the requested documents for extradition have not been sent although the Liechtenstein authorities sent reminders to the requesting state.
- in one case the presumed offense was not extraditable (evading payment of a bill)

2006: - in one case the offense was not an extraditable offense (simple fraud; no qualification of fraud - sanction is less than one year imprisonment)
- in one case the request was based on a fiscal offense; the requesting state did not send documents on other offenses, although invited to do so.

Offenses related to the incoming requests:

Theft	5
Fraud	4
Drugs	4
Robbery	2
Sexual offense	2
Criminal association and fraud	1
Evading payment of a bill	1
Theft and fraud	1
Fraud and money laundering	1
Robbery and criminal association	1
Fiscal offense	1

Requests to take over prosecution:

		Refused:
2003	11	2 (dual criminality not met; no jurisdiction)
2004	6	-
2005	11	4 (no jurisdiction; incomplete documentation)
2006	5	2 (no jurisdiction)

(NB: the offenses are not specified.)

Analysis

776. The legal framework of the extradition system is basically sound. The conditions Liechtenstein imposes are universally applied in the extradition domain, barring the strict application of the fiscal fraud exception. The number of incoming and outgoing extradition requests is quite high taking into account the country's size, but obviously this has to do with the amount of assets present or managed in Liechtenstein. The available data indicate positive cooperation from Liechtenstein to bring the proceedings to a satisfactory result. The significant scope for appeal is a delaying factor that is effectively used in some cases. Liechtenstein applies the "aut dedere, aut judicare" principle readily, both in the active and passive sense, i.e., transfer of proceedings to other countries (standard practice in money laundering cases) or taking over from other foreign jurisdictions. Finally, the dual criminality principle may prove to be a restraining factor in money laundering and terrorism financing extradition cases because of the deficiencies in the criminalization of these offenses in the StGB (see R.1 and SR.II), but this has not yet been tested in practice.

6.4.1 Recommendations and Comments

- The legislator should endeavor to find a solution for possible excessive delays caused by delaying tactics before the Constitutional Court;
- The refusal grounds for extradition should exclude serious and organized fiscal fraud;
- The deficiencies in the ML and FT offenses need to be addressed so as not to pose a potential obstacle to extradition in the light of the dual criminality principle.

6.4.2 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**PC**	• Excessive delays still possible by extensive means of appeal; • Serious and organized fiscal fraud is not an extraditable offense; • Deficiencies in ML and FT offense may negatively impact possibility to extradite.
R.37	**C**	—

SR.V	**PC**	• Excessive delays still possible by extensive means of appeal; • Deficiencies in ML and FT offense may negatively impact possibility to extradite.

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

777. All rules and comments relating to Liechtenstein's ability to provide international cooperation apply equally to cases involving money laundering or terrorist financing.

Legal Framework:

Widest Range of International Cooperation (c. 40.1)

778. Even outside the context of MLA the cross-border police cooperation is intense and effective. Traditionally, the national police endeavors to give to its foreign colleagues all assistance that falls outside the MLA sphere.

779. As the statistics show, the FIU is quite active in the international cooperation scene at FIU level. According to Article 7 FIU Act, the FIU may exchange information and otherwise cooperate with any counterpart FIU. In so doing, it can exercise all the powers vested in the unit by virtue of the domestic law.

780. With respect to the FMA, provisions for information exchange with foreign supervisors are included in the acts regulating financial institutions and in the DDA. Communication of non-public information is subject to similar restrictive conditions in the BA (Article 36), the IUA (Article 102), the ISA (Article 61), and the DDA (Article 37). Information can be provided if public order, other significant national interests, secrecy provisions or fiscal interests are not violated and if certain criteria are met, among which are:

- 'specialty': the information has to be used exclusively for supervisory purposes;
- confidentiality: the receiving authority must be covered by official secrecy provisions; and
- 'the long arm' principle: the FMA must retain control over the subsequent use and any further dissemination of the information.

781. For banks, the authorities indicated that several Superior Court decisions have authorized the FMA to share information on customer identification, beneficial owners, and transactions. Requests should be reasonable and follow mutual legal assistance procedures (this issue is elaborated in greater detail in Section 3.4.1). It is open to question as to whether the precedents established by these decisions could extend also to insurance, investment undertakings, and certain DNFBPs (trustees, lawyers, and auditors). Moreover, the law provides customers with a right of appeal to the Superior Court, which could result in delays in the provision of information.

782. For asset management companies, the AMA provisions (Articles 53 and 57) authorize the FMA to supply a foreign competent authority with supervisory information without preconditions when the counterpart is an EU country, and subject to agreeing to an MOU, for third states. Article 50 AMA defines the conditions for cooperation with competent authorities of Member States: the FMA must inform a home supervisor in a Member state when it has good reasons to suspect that entities not subject to its supervision carry out activities contrary to the provisions of Directive 2004/39/EC on the territory of another Member State (and vice-versa); more generally, the FMA shall supply a requesting competent authority of a Member State with all information that it needs to carry out its supervisory responsibilities. Information subject to official secrecy may only be disclosed with the express agreement of the FMA (Article 53 AMA). Cooperation with competent authorities of third States is regulated under Article 57 AMA, which states that agreements for information exchange can be concluded by the FMA providing that the information disclosed is subject to guarantees of official secrecy and is requested for the performance of supervisory functions.

Clear and Effective Gateways for Exchange of Information (c. 40.2):

783. Interpol is the appropriate communication channel for speedy and multilateral exchange of information directly between police authorities. The accession of Liechtenstein to the Schengen system, expected for October 2008, will also have an important impact on the efficiency and speed of the cooperation with the Schengen countries' police agencies.

784. The FIU is a member of the Egmont Group since 2001. It has signed MOUs or cooperation agreements with nine counterpart FIUs. It does not require an MOU to exchange information with other FIUs and can do so on a case-by-case basis. Such exchange of information is governed by the Egmont Group Principles of Information Exchange, i.e.,

- free exchange of information for purposes of analysis by the FIU;
- no dissemination to third parties or other use of the information without prior consent of the supplying FIU; and
- general condition of protection of the confidentiality.

785. In the supervisory area, insofar as information requested from the FMA by a foreign supervisor would include customer data, the Administrative Proceedings Law applies. In this regard, an order must be issued by the FMA requiring the financial institution to provide the requested information. The order may be appealed by the financial institution—and by the customer directly if he elects to do so—to the Superior Court. A concern is that this appeals process could be used to delay and, potentially, undermine the information-sharing procedure.

786. The FMA does not require the prior signing of MOUs in order to exchange information with foreign counterparts, except in certain cases under the AMA, as set out above. In practice, the FMA has made constructive use of the legal precedent described earlier and has established a reputation (confirmed in some instances by the assessors in contacts with supervisors abroad) for

a high level of cooperation and efficient implementation in response to information requests received from foreign supervisors, including in the AML/CFT area.

Spontaneous Exchange of Information (c. 40.3):

787. Both the police and the FIU have the ability to spontaneously provide information to their counterparts. Even if the margin for the FIU is smaller than that of the police in terms of the offenses covered because of its specific function and purpose, its information exchange capabilities are not limited to purely money laundering or terrorist financing matters, but also cover the predicate offenses and other issues that are of importance to any FIU, such as trends and typologies.

Making Inquiries on Behalf of Foreign Counterparts (c. 40.4):

For the police enquiry possibilities, see c. 40.5

788. In the supervisory arena, pursuant to Article 36a BA, foreign supervisory authorities may conduct on-site examinations of banks in Liechtenstein after prior notification to the FMA, directly[42], through persons appointed for this purpose, or conducted by the FMA (or an external auditor appointed by the FMA). Verifications are permissible only if the requesting authorities are bound by official or professional secrecy and use the information received exclusively for consolidated supervision for which they are responsible.

789. The FMA can conduct directly or request the external auditors to conduct inspections in institutions and persons subject to the DDA (Article 25). Similar provisions exist for asset management companies (Article 52 AMA) and investment undertakings (Article 103 IUA). The authorities informed the assessors that, on several occasions, investigations have been conducted at the request of foreign supervisory authorities.

FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):

790. Although the incoming requests are not counted as SARs, the FIU is authorized to use all its powers of analysis and enquiry in acting on incoming requests as if they have received a SAR. This is not expressly stated in the law, but flows from the logic of Article 7.2 of the FIU Act.

791. This means that the FIU can, at the request of its counterpart, check its own database and query all other databases to which it has direct or indirect access, i.e., besides publicly available and commercial information, also law enforcement and administrative information. That could also include information from financial intermediaries, but as there is no express legal text providing for such access by the FIU, this capacity is open to challenge. The issues raised about the "investigative" powers of the FIU (c. 26.3) are also relevant here. This means that the FIU should have clear access to all financial information, including deposited, also for purposes of international cooperation. In the past the FIU has, however, already responded positively to requests for financial information (see also c. 40.8).

[42] Accompanied by staff of the FMA.

Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5):

National Police

792. Police to police requests through the Interpol channel normally only allow for communication of information or intelligence, not for incisive investigation. With the consent of the involved or targeted person, however, some non-coercive investigative acts are not excluded, such as taking a statement. Otherwise the MLA procedure applies.

793. The Treaty between Liechtenstein, Switzerland, and Austria provides for an intense and extensive cooperation between the law enforcement authorities of the respective countries. Procedures are simplified and, at the request of the relevant authorities, the national police can:

- determine the domicile or sojourn of a person during a certain time;
- determine the holder of telephone numbers;
- establish the identity of a person;
- establish information concerning the origin of things (history of property in goods like cars, weapons etc.);
- coordinate and initiate search measures;
- conduct and take over cross-border observations and deliveries;
- establish the willingness of persons to stand up as a witness;
- conduct police interrogations; and/or
- clarify traces for evidence.

Customs

794. The cooperation capacities of the Swiss customs, whose radius of action includes Liechtenstein, are also available insofar as Liechtenstein is concerned.

No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):

795. The exchange of information takes place in the framework of Article 7.2 FIU Act, and needs to take into account the following conditions and restrictions:

- the cross-border cooperation must not adversely affect public order, other essential national interests, matters subject to confidentiality, or fiscal interests;
- the information supplied must be in line with the purpose of the FIU Act;

- the reciprocity principle applies;
- the information supplied can only be used to combat money-laundering, predicate offenses, organized crime, and terrorism financing;
- dissemination to other parties is only allowed with consent of the Liechtenstein FIU;
- the requesting FIU is subject to a confidentiality obligation; and
- the Mutual Assistance Act (RHG) is not applicable.

796. In the case of the FMA, communication of official information to foreign supervisory authorities is subject to meeting several conditions listed above (c. 40.1), that apply to banks (Article 36 BA), to insurance companies (Article 61 ISA), and to investment undertakings (Article 102 IUA). In practice, however, the FMA has been able to respond effectively to information requests from foreign financial supervisors, including in the AML/CFT area.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):

797. The fiscal exception rule pervades the whole Liechtenstein law enforcement system, including the intelligence sector. The FIU activity is also governed by this principle, which impacts on the international cooperation relations (Article 7.2a FIU Act). Requests that are exclusively fiscally motivated consequently cannot receive a positive response. This restriction needs to be seen in its right perspective however: most FIU requests are made at a stage where the predicate criminality is unknown, in which case nothing prohibits the FIU from complying with the non-fiscal part of a request. The same is valid for the police to police cooperation. Exchange of information by the FMA is limited to supervisory purposes which exclude requests involving tax matters.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):

798. Banking secrecy or other financial confidentiality cannot be opposed to the FIU, which has access to such information on the basis of Article 5.c FIU Act. Article 7.2a FIU Act, however, makes it a condition for the information exchange that matters subject to confidentiality should not be affected. The FIU does not consider this to be the case for the information gathering with banks and other financial intermediaries, and has often supplied such confidential material already. The restriction should be understood in the sense that the information exchange can serve no other purpose than countering ML and FT.

Safeguards in Use of Exchanged Information (c. 40.9):

799. The exchange of information between FIUs is purpose bound and subject to confidentiality. This principle is reflected in Articles 4.3, 7.2.e and f (confidentiality guarantee and prior consent rule) and 11 FIU Act (prohibition grounds for releasing information). It is also a fundamental element of the Egmont Group's Principles of information exchange, to which the Liechtenstein FIU has committed itself. The database holding the foreign counterpart

information is secured and only accessible to the FIU itself. Dissemination of such information is subject to the prior consent of the supplying FIU.

800. The FMA may request foreign authorities to provide it with information or records for supervisory purposes (Article 37.2 DDA, Article 61 ISA, Article 35-4 BA). Information received can only be used to verify compliance with CDD, impose sanctions, or appeal decisions in administrative or judicial proceedings (Article 37.5 DDA, Article 102 IUA). Data may be forwarded with the express assent of those authorities that have communicated the information and, if applicable, only for purposes for which such authorities have given their assent. Pursuant to Article 36 BA or Article 102 IUA, information received from foreign authorities may be used only for the following purposes:

- verification of the licensing requirements and consolidated supervision;
- imposition of penalties;
- in administrative proceedings concerning the appeal of decisions issued by a competent authority;
- in judicial proceedings.

Additional Element -Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1):

801. According to the Egmont Principles of Information Exchange, all requests have to be justified by a statement of facts request clarifying the purpose of the request and the requesting party.

Additional Element –Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11)

802. As for non-FIU held information, see 4.4 above.

International Cooperation under SR.V (applying c. 40.1-40.9 in R. 40, c. V.5): See above

Additional Element under SR.V (applying c. 40.10-40.11 in R. 40, c. V.9): See above

Statistics (applying R.32):

803. FIU Information Exchange

	Requests for information submitted to foreign FIUS	**Requests for information received from foreign FIUs**
2003	145	129
2004	134	119
2005	103	89
2006	158	139

804. No requests have ever been refused as such. In some cases, the requesting FIU was asked in vain to supply additional information or clarification because of the incompleteness of the query (such as no statement of facts), and the file was closed subsequently. There are no separate statistics on spontaneous referrals to other FIUs.

Analysis

805. The commitment to international cooperation, both by the FIU and the police, is evident. Refusals to cooperate are justified by legal prohibitions, particularly the fiscal nature and purpose of the request.

806. The access to confidential financial information at the request of a foreign FIU is not expressly provided for. There is a possible controversy here, as the FIU Act makes access to additional information held by financial entities in principle subject to the condition of a SAR having been filed. On the other hand, Article 5c FIU Act gives the FIU broad power to query relevant information from non-public sources, so it is a matter of interpretation. The international standards do not expressly impose access to financial information at the request of a foreign FIU (see R.40.4.1), but, in any case, the FIU takes a broad view on the issue and has already shown its willingness to cooperate also in this respect.

807. In practice, cooperation and exchange of information with foreign supervisors appears to be working well. However, the legal basis for information exchange in respect of certain categories of financial institutions and DNFBPs remains open to some question. The authorities pointed to Superior Court decisions (as described in Section 3.4 of this report in relation to banking secrecy) which constitute a consistent jurisprudence that allows information exchange related to customer information, including on beneficial ownership, and, it appears, also applies to information on transactions. The Courts' decisions, however, reference the provisions of the BA and not other special legislation for financial institutions or DNFBPs or, specifically, the DDA, so that their application to the full range of possible AML/CFT-related requests remain open to some degree of legal question. A proposal to amend the BA is currently before parliament, including the deletion of the current references to banking secrecy acting as a barrier to the sharing of information with foreign supervisors; the assessors are not aware of any proposal to similarly amend the other sectoral laws or the DDA or laws in relation to trustees, lawyers, or auditors. In relation to asset management companies, the AMA, issued in 2005, incorporates various provisions for information exchange with both EEA member states and third countries.

808. For most categories of financial institutions and DNFBPs, the applicable legislative provisions allow for inspections of domestic entities at the request of foreign supervisors. Verification may be conducted by foreign supervisors or by the FMA which can delegate the task to external auditors. Recent examples show that the system appears to be operating effectively.

6.5.2 Recommendations and Comments

- FIU access to confidential financial information held by DDA subjects, including at the request of foreign counterparts, should be expressly provided for.
- To reflect relevant jurisprudence, provide in legislation an explicit exclusion from secrecy provisions for all categories of financial institutions and DNFBPs to support the provision of all relevant confidential information to foreign competent authorities where necessary for AML/CFT purposes;
- Reconsider the current appeals procedure regarding orders under the Administrative Proceedings Law with a view to improving the efficiency and effectiveness of information-sharing measures.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**PC**	• The law does not expressly provide for the FIU to have direct or indirect access to all relevant information held by all entities subject to the DDA; • Current practice for supervisory information exchange relies on case law to override legislation that includes explicit secrecy provisions restricting information exchange; • It is not clear that supervisory information exchange is legally permissible for non-bank financial institutions (other than for asset management) and DNFBPs; • Current appeals procedure has potential to undermine efficiency and effectiveness of information exchange.
SR.V	**PC**	• No express provision for exchange of financial information at FIU level; • Current practice for supervisory information exchange relies on case law to override legislation that includes explicit secrecy provisions restricting information exchange; • It is not clear that supervisory information exchange is legally permissible for nonbank financial institutions (other than for asset management) and DNFBPs; • Current appeals procedure has potential to undermine efficiency and effectiveness of information exchange.

7 OTHER ISSUES

7.1 Resources and statistics

30.1/23 FIU

809. The FIU is an independent administrative office with a separate budget covering the operational expenses (telecommunication, administration, commercial databases, travel, separate post for its own database). The salaries of its staff are paid by the Ministry of Finance. It disposes of its own secured premises and its own IT infrastructure. It currently employs seven staff members: the Head and his deputy (both lawyers), three analysts (one former police, one former

bank compliance officer, one economist), one analyst/IT specialist and one secretary. The composition of the FIU reflects its multidisciplinary approach. There is also diversity in the nationalities: three Liechtenstein, three Swiss, and one Austrian.

810. The Head of FIU initially screens the candidate staff in a selection procedure as to their capabilities and probity. The formal hiring procedure is conducted via the Office of Human and Administrative Resources.

811. The FIU organizes internal training sessions for its staff members, both on an ad hoc and a regular basis, with focus on new typologies and debriefing of real cases. The operational analysts have also attended the Swiss Criminal Analysis Course and the Swiss Police Institute in Neuchâtel (Switzerland). Moreover, they participate in exchange programs with foreign FIUs.

812. Overall, as already noted before, the FIU is soundly structured, staffed with personnel with the appropriate training, and shows the required integrity and professionalism to produce quality output. The technical, human, and financial resources are presently of an adequate level that enables the FIU to perform its duties in an efficient way. The confidentiality of the FIU data, as well as the operational autonomy of the unit, is rigorously protected. As noted above (Section 2.5.2), the legal resources in respect of the powers of inquiry of the FIU could be raised to a higher level.

30.1 Law enforcement

813. Since December 1, 2005, the Liechtenstein Office of the Public Prosecutor consists of six Public Prosecutors. They all carry the general responsibility to prosecute offenses, including cases of money laundering, predicate offenses, and terrorism financing, though with none of them specializing in dealing with these offenses. The Office of the Public Prosecutor also employs five persons for its administration. Organizationally, the Public Prosecutor is subordinate to the Government, but acts as an independent magistrate whenever he exercises his functions in the proceedings before the courts.[43] The financial, human, and technical resources are deemed sufficient. There are 14 judges in the various Liechtenstein courts. This number is also considered adequate and there is no real backlog of pending cases.

814. In the Economic Crimes Unit of the Liechtenstein National Police, nine qualified officers deal with financial investigations, with one investigator specialized in cases of terrorist financing. The technical equipment is modern, with adequate hardware and software available for operational case analysis. The Unit is supported by the forensic specialists of the criminal police. On average, the ECU investigates 100 domestic and 100 mutual legal assistance cases annually, and conducts between 80 and 100 searches, which they find a manageable workload.

[43] A Princely Ordinance of May 19, 1914, which has never been abolished, provides in its Article 6 that in case of serious and political offenses, the Public Prosecutor has to consult the government.

30.2

815. Over the last six years, magistrates from Austria who had already served there as judges or prosecutors have been recruited as Public Prosecutors. Of the Liechtenstein citizens trained in Liechtenstein between 2002 and 2005, one person joined the team of Public Prosecutors in December 2005, and the second followed in January 2007. When recruiting new staff members, training and experience in criminal prosecution are important criteria. All Public Prosecutors working in Liechtenstein have a university degree in law and years of practical experience.

816. The Economic Crimes Unit of the Liechtenstein National Police, which is responsible for investigating money laundering and terrorist financing, employs specialists recruited either abroad (Germany, Austria) or in Liechtenstein. They have specialized expertise relating to banking, accounting, auditing, trusts, and insurance. Recruits are trained in Liechtenstein and abroad as criminal police investigators for two years. They are screened on their integrity through database and criminal record checks. Recruits from outside Liechtenstein are checked through the foreign authorities.

30.3

817. The Office of the Public Prosecutor meets the challenges of the increased sophistication of criminal behavior with appropriate and continued training. The prosecutors attend several lectures on legal issues in Liechtenstein each year, and they also participate in international conferences and training courses. The Prosecutor General represents the Liechtenstein Office of the Public Prosecutor in international bodies. The Office of the Public Prosecutor is a member of the International Association of Prosecutors (IAP), the CCPG of the Council of Europe, and regularly takes part in the conferences of these organizations and the regional meetings of prosecution authorities. Liechtenstein is also associated with Eurojust and the European Judicial Network as a third State, and its prosecutors attend the training courses offered by these organizations. Prosecutors attend each year the continuing education program of the Academy of European Law in Trier. One prosecutor completed post-graduate studies on the suppression of economic crime between 2003 and 2005 in Lucerne (Executive Master of Economic Crime Investigation, EMECI).

818. The staff members of the Economic Crimes Unit of the Liechtenstein National Police attend annual expert training courses in Austria, Germany, Switzerland, and other countries (Interpol and FBI continuing training courses). An annual budget of over CHF20,000 is available for this purpose.

30.4 (additional)

819. A budget for continued training of judges in all areas is available. They can attend such programmers, especially in Switzerland, Austria, and also at the Academy of European Law in Trier. One judge of the Court of Justice successfully completed his Executive Master of Economic Crime Investigation post-graduate studies at the Lucerne School of Business in Switzerland. One other judge has been active for many years in the delegation of the MONEYVAL committee at the Council of Europe. The four investigating judges and judges for

mutual legal assistance who primarily deal with money laundering and occasionally terrorist financing are grouped together in their own division of the Court of Justice.

30.1 (resources central authority MLA/EXTR)

820. With the adoption of a new International Mutual Legal Assistance in Criminal Matters Act in 2000, the responsibility of the Ministry of Justice in the area of money laundering, seizure and confiscation of the proceeds from crime was modified, as it became a "Central Authority" for all mutual legal assistance and extradition cases. Two legal experts and a secretary are still assigned to handling all MLA matters and liaising with the courts, the public prosecution office, as well as with the competent foreign authorities and international organizations.

30.2 (staff)

821. All legal officers of the Ministry of Justice have a university degree and appropriate experience in their field of work. They must have an impeccable reputation and swear an oath before the Prime Minister to comply with the Liechtenstein laws and to maintain the confidentiality of their work.

30.3 (training)

822. The staff members have taken part in training courses at the national level and various international meetings and conferences (e.g., periodic PC-OC meetings of the Council of Europe in Strasbourg; Seminar on Administrative and Legal Assistance of the University of St. Gallen in Olten; Second Zurich Meeting on International Trade Law: New Risks for Businesses and Management due to Bribery and Corruption, etc.). Moreover, it is planned for one staff member to participate in an approximately six-week staff exchange program with the Austrian Ministry of Justice (especially also with the Austrian "central authority") in 2007.

Recommendations and Comments

- Maintain statistics on criminal procedure seizures and confiscations and more comprehensive statistics on seizure and confiscation of criminal proceeds, and on spontaneous referrals to foreign counterparts.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	**LC**	(composite rating)
R.32	**LC**	• No overall figures of seizure and confiscation of criminal proceeds; no statistics on criminal procedure seizures and confiscations; • No figures provided on spontaneous referrals by the FIU.

Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating[44]
Legal systems		
1. ML offense	**PC**	• At the time of the assessment, no offenses in the categories of environmental crimes, smuggling, forgery, and market manipulation were predicate offenses for money laundering. • The law does not criminalize self-laundering in relation to converting, using, or transferring criminal proceeds. • Prosecution for money laundering is not possible in cases where the offender has been convicted for the predicate offense. • Association or conspiracy of two persons to commit money laundering is not criminalized.
2. ML offense—mental element and corporate liability	**LC**	• There is no criminal liability of corporate entities. • Liechtenstein has not yet developed its own case law on money laundering.
3. Confiscation and provisional measures	**LC**	• Seizure and confiscation of laundered assets as object of the ML offense not covered. • Not all instrumentalities subject to confiscation.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• Current practice for information exchange relies on case law to override legislation that includes explicit secrecy provisions restricting information exchange. • Current appeals procedure has potential to undermine efficiency and effectiveness of information exchange. • Provisions granting criminal prosecution access to customer information do not specifically apply to insurance, asset management, or investment undertakings.
5. Customer due diligence	**PC**	• Financial institutions are entitled by the DDA to assume that the contracting party is the beneficial owner in certain cases; definition of beneficial owner does not

[44] These factors are only required to be set out when the rating is less than Compliant.

		expressly extend to the natural person holding control rights or interests; no explicit requirement to verify identity of beneficial owners. and not always clear that implementation extends to identifying the natural persons who are the ultimate beneficial owners. • Definition of categories of high-risk customers not adequately specified and enhanced due diligence not explicitly required. • Requirements for verification of identification data are too limited and do not include authorized parties. • No requirement to transmit customer information with domestic wire transfers and threshold for due diligence on wire transfers exceeds FATF threshold. • Categories of exceptions allowed in the application of CDD measures are not consistent with the provisions of Recommendation 5.2. • Extensive reliance on non-resident third-party intermediaries which is not classified by the Liechtenstein authorities to be high risk.
6. Politically exposed persons	**PC**	• No explicit requirement for enhanced due diligence for PEP-related business. • No specific requirement to obtain senior management approval to continue the business relationship when a customer or a beneficial owner is found to be, or subsequently becomes a PEP. • No explicit requirement to determine the source of wealth for PEP-related business.
7. Correspondent banking	**PC**	• No requirement for respondent and correspondent banks to document their respective AML/CFT responsibilities. • Financial institutions providing correspondent services not required to determine whether the respondent has been the subject of a money laundering or terrorist financing investigation or regulatory action. • Regarding payable-through accounts, financial institutions are not required to ensure that the respondent has performed full CDD or that customer information is available upon request.

		• The coverage of the current correspondent banking requirements includes banks but not all other categories of financial institutions.
8. New technologies & non face-to-face business	**PC**	• Limited requirements to address the AML/CFT risk of misuse of new technologies in the financial services area. • No specific requirement for financial institutions to have policies and procedures to reflect the additional risk involved in non-face to face business relationships or transactions beyond overall risk-based approach.
9. Third parties and introducers	**PC**	• Conduct of ongoing monitoring included in the scope of delegation to third parties. • Responsibility in delegating to a third party is unduly limited by the protection from punishment in Article 30.2 DDA. • Ad hoc approach to determining the countries in which an acceptable third party intermediary can be based.
10. Record-keeping	**C**	-
11. Unusual transactions	**PC**	• Financial institutions not explicitly required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.
12. DNFBPs–R.5, 6, 8–11	**PC**	• Commercial company formation not covered by the DDA; • Requirements to identify beneficial owners need to be strengthened, especially in regard to natural persons holding rights or interests; • No explicit requirement for enhanced due diligence for high-risk customers; categories of such customers inadequately specified; • No requirements for verification of identity of authorized parties; • Requirement and procedures for conducting enhanced due diligence for PEP-related business should be more explicitly specified; • Extensive reliance on non-resident third-party intermediaries, including for conducting ongoing monitoring, which is not classified by the Liechtenstein authorities to be high risk; ad hoc approach to determining the countries in which an acceptable third party intermediary can be based;

		responsibility in delegating to a third party is unduly limited by the protection from punishment; • No specific requirement for financial institutions to have policies and procedures to reflect the additional risk involved in non-face to face business relationships or transactions; • Requirement to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose only implicitly imposed.
13. Suspicious transaction reporting	**PC**	• Attempted occasional transactions are not covered by the SAR reporting requirement. • Funds that are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organizations are not specifically included within the SAR reporting requirement. • Weaknesses in the efficiency and effectiveness of the reporting system (automatic five-day freezing on filing a SAR; statutory requirement for simple and special enquiries prior to deciding to file a SAR; low volume of SARs).
14. Protection & no tipping-off	**PC**	• The tipping-off provision applies only for a maximum of 20 days. • Directors, officers, and employees (permanent and temporary) are not explicitly covered.
15. Internal controls, compliance & audit	**LC**	• No requirement for financial institutions to screen for probity when hiring new employees. • No express requirement for financial institutions to maintain adequately resourced the requisite internal audit function.
16. DNFBPs–R.13–15 & 21	**PC**	• Attempted transactions are not covered by the SAR reporting requirement. • Funds that are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations are not specifically included within the SAR reporting requirement. • Low SAR reporting rates for DNFBPs. • The tipping off provision applies only for a maximum of 20 days.

		• Directors, officers and employees (permanent and temporary) are not explicitly covered. • No explicit requirement to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. • Limited measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries
17. Sanctions	**PC**	• No criminal corporate liability is defined. • Proportionality and effectiveness of sanctions system is restricted by significant gaps in the ladder of available sanctions, as the scope of administrative sanctions is very narrow.
18. Shell banks	**LC**	• Licensing requirements do not provide sufficient safeguards to exclude the possibility of establishing a shell bank in Liechtenstein.
19. Other forms of reporting	**C**	-
20. Other NFBP & secure transaction techniques	**C**	-
21. Special attention for higher risk countries	**PC**	• No explicit requirement to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. • Limited measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.
22. Foreign branches & subsidiaries	**PC**	• No requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF Recommendations in countries which do not or insufficiently apply the FATF Recommendations. • No requirement that the higher standard be applied when home and host country AML/CFT measures differ. • No requirement for nonbank financial institutions to inform the FMA of any local laws or regulations preventing them from monitoring AML/CFT risk on a global basis. • Indications of weaknesses in and barriers to

		implementation of effective group-wide AML/CFT measures in Liechtenstein financial institutions.
23. Regulation, supervision and monitoring	**C**	-
24. DNFBPs—regulation, supervision and monitoring	**LC**	• Proportionality and effectiveness of sanction system is restricted by significant gaps in the ladder of available sanctions, as the scope of administrative sanctions is very narrow. • No corporate criminal liability is defined. • Proportionality and effectiveness of sanctions system is restricted by significant gaps in the ladder of available sanctions.
25. Guidelines & Feedback	**LC**	• No written guidelines issued by the FIU regarding SAR reporting. • FMA guidelines should be updated, particularly to provide guidance on enhanced due diligence. • No guideline has been issued with regard to CFT requirements.
Institutional and other measures		
26. The FIU	**LC**	• The law does not expressly provide for the FIU to have direct or indirect access to all relevant information held by all entities subject to the DDA (also impacts on effectiveness). • FIU Act not amended to formally include terrorism financing.
27. Law enforcement authorities	**LC**	• No ML convictions as a result of absence of autonomous money laundering prosecutions (impacts on effectiveness).
28. Powers of competent authorities	**C**	-
29. Supervisors	**LC**	• No specific provisions that allow the FMA to ensure that financial institutions apply AML/CFT measures consistent with FATF Recommendations across financial groups.
30. Resources, integrity, and training	**LC**	• Additional resources needed if FMA supervisors are to participate in the AML/CFT on-site inspection program. • Additional resources needed for supervision of insurance sector, including with respect to AML/CFT risks.
31. National co-operation	**C**	-
32. Statistics	**LC**	• No overall figures of seizure and confiscation of criminal proceeds. no statistics on criminal procedure seizures and confiscations.

		• No figures provided on spontaneous referrals by the FIU.
33. Legal persons–beneficial owners	**PC**	• The definition of "beneficial owner" does not extend to controllers of legal entities that do not hold an economic right to the legal entity's assets; therefore, there is no obligation to obtain, verify, and maintain information on such persons that ultimately control a legal entity. • Intermediaries are not required by law to verify beneficial ownership information. • No measures are in place to ensure that information on beneficial ownership and control of legal entities that are commercially active in the domiciliary state is obtained, verified, and kept in all cases.
34. Legal arrangements – beneficial owners	**PC**	• The definition of "beneficial owner" does not extend to controllers of legal arrangements that do not hold an economic right in the trust assets; therefore, there is no obligation to obtain, verify, and maintain information on the natural persons that ultimately exercise effective control over a trust. • Intermediaries are not required by law to verify beneficial ownership information. • "Private trustees" in Liechtenstein are not under a legal obligation to obtain, verify, and record beneficial ownership information.
International Cooperation		
35. Conventions	**PC**	• Liechtenstein has not ratified the Palermo Convention. • Liechtenstein has not fully implemented all provisions of the Palermo and Vienna Conventions.
36. Mutual legal assistance (MLA)	**PC**	• Excessive delays still possible by extensive means of appeal. • No MLA for serious and organized fiscal fraud. • Deficiencies in ML and FT may negatively impact on dual-criminality ruled MLA.
37. Dual criminality	**C**	–
38. MLA on confiscation and freezing	**LC**	• Restricted confiscation for instrumentalities also in MLA context. • No consideration of asset forfeiture fund.
39. Extradition	**PC**	• Excessive delays still possible by extensive means of appeal.

		• Serious and organized fiscal fraud is not an extraditable offense. • Deficiencies in ML and FT offense may negatively impact possibility to extradite.
40. Other forms of co-operation	**PC**	• The law does not expressly provide for the FIU to have direct or indirect access to all relevant information held by all entities subject to the DDA. • Current practice for supervisory information exchange relies on case law to override legislation that includes explicit secrecy provisions restricting information exchange; • It is not clear that supervisory information exchange is legally permissible for non-bank financial institutions (other than for asset management) and DNFBPs; • Current appeals procedure has potential to undermine efficiency and effectiveness of information exchange.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Liechtenstein has not fully implemented all provisions of the United Nations International Convention for the Suppression of Financing of Terrorism. • Implementation of UNSCR 1267 and UNSCR 1373 is incomplete.
SR.II Criminalize terrorist financing	**PC**	• The financing of individual terrorists is not explicitly criminalized and not all instances of such financing are currently covered under the legal framework as is required under SR.II. • As Liechtenstein's definition of "terrorist organization" references a definition of "terrorist acts" and not all acts considered terrorist acts under the international standard are covered by this definition, the financing of terrorist organizations is not criminalized in all instances required by SR.II. • Article 278d StGB only provides for "criminal offenses" and not for any other acts committed with the required intent to be terrorist acts. • There is no criminal liability of corporate entities. • The lack of prosecutions and convictions for terrorist financing make it difficult to assess the effectiveness of the legal framework.

SR.III	Freeze and confiscate terrorist assets	**PC**	• No specific comprehensive procedures in place to respond adequately to the requirements of an effective freezing regime outside the context of UNSCR 1267. • Notion of "control" and "possession" not clearly defined. challenge of freezing measure not specifically provided for in the Taliban Ordinance.
SR.IV	Suspicious transaction reporting	**PC**	• Attempted occasional transactions are not covered by the SAR reporting requirement. • Volume of SAR reporting appears low, although quality is high. • Funds that are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organizations are not specifically included within the SAR reporting requirement.
SR.V	International cooperation	**PC**	• Excessive delays still possible by extensive means of appeal. • Deficiencies in ML and FT may negatively impact on dual criminality-ruled MLA. • Restricted confiscation for instrumentalities also in MLA context. • No express provision for exchange of financial information at FIU level.
SR.VI	AML/CFT requirements for money/value transfer services	**LC**	• Threshold for obtaining customer identification is too high.
SR.VII	Wire transfer rules	**NC**	• Minimum threshold to obtain originator information higher than acceptable under SR.VII.1. • No requirement to always include account number or unique reference number in originator information for cross-border wire transfers. • No provisions for inclusion of originator information for domestic wire transfers. • Financial institutions allowed to opt out of transmitting customer information in certain circumstances. • No requirement for each intermediary financial institution in the payment chain to maintain all the required originator information with the accompanying wire transfer. • No specific requirements for financial institutions when receiving transfers without full originator information.

		• No specific measures in place to monitor compliance with SR.VII. • No specific sanctions defined with regard to the provisions implementing SR.VII.
SR.VIII Nonprofit organizations	**PC**	• Review needed of Liechtenstein's NPO laws and regulations. • Insufficient outreach to the NPO sector on FT risks.
SR.IX Cash Border Declaration & Disclosure	**NC**	• Liechtenstein does not have a disclosure or declaration system in place to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing.

Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2, & 32)	• Amend the law to extend the list of predicate offenses for money laundering to offenses in the categories of environmental crimes, smuggling, forgery, and market manipulation. • Amend the law to extend the offenses of converting, using, or transferring criminal proceeds to include criminal proceeds obtained through the commission of a predicate offense by the money launderer. • Amend the law to eliminate Article 165.5 StGB to permit the prosecution for money laundering also in cases where the offender has been punished for the predicate offense. • Amend the law to criminalize the association or conspiracy of two persons to commit money laundering. • Develop jurisprudence on Article 165 StGB autonomous money laundering. • Amend the law to provide for criminal liability of corporate entities.
Criminalization of Terrorist Financing (SR.II & R.32)	• Amend the law to criminalize the financing of individual terrorists. • Amend Article 278d StGB to provide for "any act" committed with the required intent, not only criminal offenses, to constitute a terrorist act. • Provide for a definition of "Terrorist organization" in line with the FATF standard.
Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)	• The criminal seizure and confiscation of the laundered assets as the object of the autonomous money laundering offense needs to be formally covered. • All (intended) instrumentalities must be made subject to seizure and confiscation, irrespective of their nature. • Maintain statistics on criminal procedure seizures and confiscations and more comprehensive statistics on seizure and confiscation of criminal proceeds.
Freezing of funds used for terrorist financing (SR.III & R.32)	• Liechtenstein needs to review its response to UNSCR 1373 and address the requirements accompanying a balanced freezing system outside the context of UNSCR 1267. It should elaborate a procedure covering all specific aspects required by the standards of the exceptional freezing regime in respect of suspected terrorism related assets. • As for the Taliban Ordinance procedure, it should be clarified that the measures also target assets indirectly controlled and partially or jointly possessed by the

	designated persons. Review of the measure or other appellate possibilities should also be provided for, when challenged by the affected persons or in case of confusion of identity. • Maintain more comprehensive statistics on seizure and confiscation of criminal proceeds.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• In terms of efficiency, while direct access would be preferable, at a minimum the law should expressly provide for indirect access of the FIU, through the FMA, to financial and other relevant information held by the non-disclosing entities subject to the DDA. • The FIU Act needs to be brought in line with the DDA in respect of its terrorism financing remit. • Maintain statistics on criminal procedure seizures and confiscations and more comprehensive statistics on seizure and confiscation of criminal proceeds, and on spontaneous referrals to foreign counterparts.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• The Public Prosecutor should endeavor to take on more autonomous money laundering investigations, especially where no foreign proceedings have been instituted. • Maintain statistics on criminal procedure seizures and confiscations and more comprehensive statistics on seizure and confiscation of criminal proceeds.
3. Preventive Measures–Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5–8)	• Strengthen legislative requirements for obtaining beneficial ownership information: for all business relationships financial institutions should be required to (i) always determine the natural person who is the beneficial owner (or owns or controls the customer); and (ii) understand the ownership and control structure of their customer. • Define in law or regulation a wider range of high-risk customers to include notably non-resident accounts, accounts opened through an intermediary, entities with bearer shares, trusts and foundations, and entities registered in privately managed registers and databases. • Define and explicitly require by means of law or regulation enhanced due diligence for high-risk customers. • Strengthen obligation to verify identification data for customers entering into business relationships, beneficial owners and authorized parties. • Require financial institutions to provide customer information when making domestic wire transfers and align threshold in the DDA and DDO for due diligence on wire transfers with the minimum set out in SR.VII of

	EUR/USD1,000. • Bring the current exceptions to identification requirements into line with Recommendation 5.2 which requires at a minimum reduced or simplified measures. • The FMA should consider classifying business obtained through cross-border third-party intermediaries as requiring a level of enhanced due diligence. • Provide an explicit requirement for enhanced due diligence for PEP-related business, preferably in law or regulation, having regard to the level of potential risk in Liechtenstein. • Require financial institutions to obtain senior management approval to continue the business relationship when an existing customer or beneficial owner is found to be, or subsequently becomes a PEP. • Provide for an explicit obligation by financial institutions to determine the source of wealth of customers and beneficial owners identified as PEPs. • Consider applying similar measures to domestic PEPs. • Provide an explicit requirement for financial institutions providing correspondent services to determine whether the respondent has been the subject of a money laundering or terrorist financing investigation or regulatory action. • Amend the current provisions to provide explicitly for the documenting of the respective AML/CFT responsibilities of the respondent and correspondent bank. • Regarding payable-through transactions, require Liechtenstein financial institutions to obtain a confirmation from the correspondent financial institution that all CDD requirements of Recommendation 5 have been complied with and that the correspondent financial institution is able to provide relevant customer identification data upon request. • For the sake of completeness, revise the DDA and DDO provisions for correspondent banking relationships and similar relationships to cover all relevant categories of financial institutions. • Require financial institutions to take measures to address the risk of misuse of new technologies for ML or FT purposes, particularly for internet banking. • Require financial institutions to take measures expressly to address the risk of non-face to face business.
Third parties and introduced business (R.9)	• Amend the DDA to exclude the conduct of ongoing monitoring from the scope of delegation to third parties. • Remove the protection from punishment set out in Article 30.2 DDA in the event of the failure of an intermediary to meet DDA requirements.

	• The authorities should determine countries in which third parties who conduct due diligence on behalf of Liechtenstein financial institutions can be based, by reference to the adequacy of their application of the FATF Recommendations, and require financial institutions to check that such third parties have appropriate preventive measures in place.
Financial institution secrecy or confidentiality (R.4)	• To reflect relevant jurisprudence, provide in legislation an explicit exclusion from secrecy provisions to support the provision of all relevant confidential information to foreign competent authorities where necessary for AML/CFT purposes. • Reconsider the current appeals procedure regarding orders under the Administrative Proceedings Law with a view to improving the efficiency and effectiveness of information-sharing measures. • Grant criminal prosecution access to customer information from insurance, asset management, or investment undertakings.
Record keeping and wire transfer rules (R.10 & SR.VII)	• Provide in law or regulation that, for wire transfers of EUR/USD1,000 or more, banks should be required to obtain and transmit full originator information with the wire transfer. • Require financial institutions to always include the originator's account number or reference number in cross-border wire transfers. • Require inclusion of originator information in domestic wire transfers. • Require that financial institutions treat wire transfers between Liechtenstein and Switzerland as international wire transfers. • Limit or repeal the DDO "legitimate reason" provision under which banks can currently avoid transmitting customer information with certain wire transfers. • Require each intermediary financial institution in the payment chain to maintain all the required originator information with the accompanying wire transfer. • Introduce risk-management requirements for Liechtenstein financial institutions where they are beneficiaries of wire transfers that are not accompanied by full originator information. • The FMA should introduce additional measures as needed to effectively monitor compliance with the requirements in relation to wire-transfers.
Monitoring of transactions and relationships (R.11 & 21)	• Provide explicitly that financial institutions be required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have

	no apparent or visible economic or lawful purpose. • Introduce a specific requirement to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. • Introduce effective measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.
Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	• To enhance effectiveness: remove the provision for automatic freezing of assets on the filing of an SAR; simplify the SAR reporting requirement so as not to have the forming of suspicion made legally conditional on conducting prior simple and special enquiries under Article 15 DDA; and ensure that the pre-clearance system for SARs, as currently applied by the FIU, is not permitted to undermine the effectiveness of the system of SAR reporting. • Extend the SAR reporting requirement to include attempted transactions. • Extend the SAR requirement to explicitly include funds that are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organizations in addition to those who finance terrorism. • Include provisions extending protection on reporting in good faith to directors, officers and employees. • Remove the time limit on the prohibition of tipping off. • To supplement its current efforts, the FIU should develop and circulate written guidelines to assist reporting entities to implement their SAR reporting requirement.
Cross Border Declaration or disclosure (SR.IX)	• Liechtenstein should put into place a disclosure or declaration system to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Require financial institutions to have in place screening procedures to ensure high standards when hiring employees. • Require financial institutions to ensure that internal audit function is adequately resourced. • Require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF Recommendations in countries which do not or insufficiently apply the FATF Recommendations. • Where home and host country AML/CFT measures differ, require branches and subsidiaries to apply the higher standard.

	• Require financial institutions to inform the FMA of any local laws or regulations preventing them from monitoring AML/CFT risk on a global basis. • The FMA should take steps to improve implementation of appropriate group-wide AML/CFT measures for Liechtenstein financial institutions.
Shell banks (R.18)	• Include as a prerequisite for licensing that banks must engage in substantive business activities in Liechtenstein or, alternatively, the authorities could opt to explicitly prohibit shell banks.
The supervisory and oversight system–competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, & 32)	• Enlarge the definition of administrative offenses to cover all appropriate DDA requirements and establish a continuum of sanctions from minor to serious DDA violations to ensure that cases are processed in a timely, effective and proportionate manner. • Define sanctions with regard to criminal liability of legal persons. • The FMA should further develop its Guideline on Monitoring of business relationships as part of the strengthening of requirements for enhanced due diligence. • Guidelines should be established to provide financial institutions and DNFBPs with specific guidance on CFT issues. • Introduce a specific provision to allow the FMA to ensure that financial institutions apply AML/CFT measures consistent with FATF Recommendations across financial groups. • Consider providing additional resources to allow FMA supervision staff to participate directly in the AML/CFT on-site inspection program. • Ensure that staff resources are adequate to address the AML/CFT risks of the insurance sector.
Money value transfer services (SR.VI)	• Reduce the legal threshold for MVT CDD to conform to the FATF wire-transfer threshold (USD/EUR1,000).
4.Preventive Measures–Nonfinancial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• Strengthen legislative requirements to cover the formation of all kinds of companies: TCSPs should conduct CDD and ascertain the beneficial owner when forming commercially-active entities and holding companies that contain commercially-active entities. • Define in law or regulation a wider range of high-risk customers to include notably non-resident accounts, accounts opened through an intermediary, entities with bearer shares, trusts and foundations, and entities registered in privately-managed registers and databases.

	• Define and explicitly require by means of law or regulation enhanced due diligence for high-risk customers. • Strengthen obligation to verify identification data for customers entering into business relationships, beneficial owners, and authorized parties. • The FMA should consider classifying business obtained through cross-border third-party intermediaries as requiring a level of enhanced due diligence. • Provide an explicit requirement for enhanced due diligence for PEP-related business, preferably in law or regulation, having regard to the level of potential risk in Liechtenstein. • Require DNFBPs to obtain senior management approval to continue the business relationship when an existing customer or beneficial owner is found to be, or subsequently becomes a PEP. • Provide for an explicit legal obligation by DNFBPs to determine the source of wealth of customers and beneficial owners identified as PEPs. • Consider applying similar measures to domestic PEPs. • Require DNFBPs to take measures to address the risk of misuse of new technologies for ML or FT purposes. • Require DNFBPs to take additional measures to expressly address the risk of non-face to face business. • Amend the DDA to exclude the conduct of ongoing monitoring from the scope of delegation to third parties; • Remove the protection from punishment set out in Article 30.2 DDA in the event of the failure of an intermediary to meet DDA requirements. • The authorities should determine countries in which third parties who conduct the due diligence on behalf of Liechtenstein DNFBPs can be based, by reference to the adequacy of their application of the FATF Recommendations. • Provide explicitly that DNFBPs be required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.
Suspicious transaction reporting (R.16)	• Conduct outreach to non-reporting TCSPs and take other appropriate measures to increase the breadth of DNFBP reporting. • To enhance effectiveness: remove the provision for automatic freezing of assets on the filing of an SAR; simplify the SAR reporting requirement so as not to have

	the forming of suspicion made legally conditional on conducting prior simple and special enquiries under Article 15 DDA; and ensure that the pre-clearance system for SARs, as currently applied by the FIU, is not permitted to undermine the effectiveness of the system of SAR reporting. • Extend the SAR reporting requirement to include attempted occasional transactions. • Extend the SAR requirement to explicitly include funds that are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organizations, in addition to those who finance terrorism. • Include provisions extending protection to directors, officers, and employees; • Remove the time limit on the prohibition of tipping off. • Introduce a specific requirement to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. • Introduce effective measures to ensure that DNFBPs are advised of concerns about weaknesses in the AML/CFT systems of other countries. • Introduce a requirement that DNFBPs examine the background and purpose of such transactions with no apparent economic or visible lawful purpose, with findings documented and available to assist competent authorities and auditors.
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	• Expand administrative offenses in order to establish a continuum of sanctions from minor to serious DDA violations and to ensure that cases are processed in a timely, effective and proportionate manner. • The FMA should further develop its Guideline on Monitoring of business relationships as part of the strengthening of requirements for enhanced due diligence. • Guideline should be issued with regard to CFT requirements. • Consider increasing the frequency of DDA audits for TCSPs. • Consider more direct involvement of FMA staff in DDA audits.
Other designated non-financial businesses and professions (R.20)	-
5. Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons–Access to beneficial ownership and control information (R.33)	• The definition of "beneficial owner" should be amended and brought in line with the FATF standard to cover the control structure of legal persons. • Intermediaries should be required by law to verify

	beneficial ownership information. • Although in practice beneficial ownership information of commercially-active companies is available in a large number of cases, the authorities should put in place measures to ensure that information on beneficial ownership and control of legal entities that are commercially-active in the domiciliary state is obtained, verified, and kept.
Legal Arrangements–Access to beneficial ownership and control information (R.34)	• The definition of "beneficial owner" should be amended and brought in line with the definition of the FATF standard to ensure that there is adequate transparency concerning the control structure of legal arrangements. • Intermediaries should be required by law to verify beneficial ownership information. • Although the number of "private trustees" active in Liechtenstein seems to be marginal, such persons should be under a legal obligation to obtain, verify, and record beneficial ownership information.
Nonprofit organizations (SR.VIII)	• Liechtenstein should conduct a review of its NPO laws and regulations. • Liechtenstein should conduct outreach with the NPO sector on the risks of FT abuse.
6. National and International Cooperation	
National cooperation and coordination (R.31 & 32)	
The Conventions and UN Special Resolutions (R.35 & SR.I)	• The authorities should ensure that all provisions of the Palermo and Vienna Conventions are fully implemented. • The authorities should ensure that all provisions of the United Nations International Convention for the Suppression of Financing of Terrorism are implemented. • Implementation of the relevant UNSCRs needs further refining to expressly cover the assets under the indirect control or ownership of terrorists, and to fully criminalize terrorism financing.
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	• The legislator should endeavor to find a solution for possible excessive delays caused by delaying tactics before the Constitutional Court. • Serious and organized fiscal fraud should be excluded from the fiscal exemption. • The deficiencies in the ML and FT offense should be remedied to enable full compliance with dual criminality-ruled requests. • The limited confiscation possibility for instrumentalities, also relevant in the MLA context, should be addressed. • The government should decide on the desirability of the establishment of an asset forfeiture fund.

Extradition (R. 39, 37, SR.V & R.32)	• The legislator should endeavor to find a solution for possible excessive delays caused by delaying tactics before the Constitutional Court. • The refusal grounds for extradition should exclude serious and organized fiscal fraud. • The deficiencies in the ML and FT offenses need to be addressed so as not to pose a potential obstacle to extradition in the light of the dual criminality principle.
Other Forms of Cooperation (R. 40, SR.V & R.32)	• FIU access to confidential financial information held by DDA subjects, including at the request of foreign counterparts, should be expressly provided for. • To reflect relevant jurisprudence, provide in legislation an explicit exclusion from secrecy provisions for all categories of financial institutions and DNFBPs to support the provision of all relevant confidential information to foreign competent authorities where necessary for AML/CFT purposes; • Reconsider the current appeals procedure regarding orders under the Administrative Proceedings Law with a view to improving the efficiency and effectiveness of information-sharing measures.
7. Other Issues	
Other relevant AML/CFT measures or issues	• Maintain statistics on criminal procedure seizures and confiscations and more comprehensive statistics on seizure and confiscation of criminal proceeds.