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Relocation to Liechtenstein's Investment Fund Centre under the new AIFM-legislation? – A Swiss & UK perspective

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I. Introduction – Current Regulatory Drivers in the Fund Business

Management, administration and distribution of investment funds are undergoing a fundamental regulatory change in Europe, especially in the UK and in Switzerland. Relevant for the fund business are the European AIFM Directive dated 8 June 2011 («EU-AIFMD»)¹ as well as relevant Level 2 measures by the Commission and ESMA together with the (planned) implementation rules in UK² and the revision of the Swiss fund legislation enacted on 28 September 2012 by the Swiss parliament³. ESMA (European Securities and Markets Authority), the successor of CESR (Committee of European Securities Regulators), drafted a technical advice on possible implementing measures and submitted it to the Commission on 16 November, 2011.⁴ On 19 December, 2012 the Commission adopted a «Delegated Regulation supplementing the AIFM Directive» (EU-AIFMD Level 2).⁵ Moreover, ESMA published a discussion paper on «Key concepts of the AIFM Directive and types of AIFM» in February 2012.⁶ As a result of the previous discussion between the authority and the participating corporations and associations of the financial sector, ESMA published

¹ DIRECTIVE 2011/61/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL dated 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (<http://eur-lex.europa.eu>).

² See Consultation Paper (CP 12/32) by the Financial Services Authority dated 14 November 2012 on rules and guidance to transpose the requirements of the Alternative Investment Fund Managers Directive (AIFMD) into UK law (www.fsa.gov.uk).

³ Bundesgesetz über die kollektiven Kapitalanlagen (Kollektivanlagengesetz, KAG) – Änderung vom 28. September 2012 (www.admin.ch).

⁴ Final report dated 16 November 2011 – ESMA's technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive (www.esma.europa.eu).

⁵ COMMISSION DELEGATED REGULATION (EU) of 19.12.2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (<http://ec.europa.eu>).

⁶ Discussion paper on Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM dated 23 February 2012 (www.esma.europa.eu).

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two consultation papers entitled «Draft regulatory technical standards on types of AIFM»⁷ and «Guidelines on key concepts of the AIFMD»⁸ concretizing and substantiating the key concepts in December 2012, the last paper being already a part of level 3 implementing measures.

The Principality of Liechtenstein was the first European country in the European Economic Area (EEA) to produce national draft legislation to implement the European Alternative Investment Fund Manager Directive on 6th March 2012 («AIFMG-Draft»)⁹. Liechtenstein then waited half a year to analyse other EEA countries' draft laws before it passed the law on 21 December 2012 («AIFMG»)¹⁰ as well as a detailed decree on 29 January 2013 («AIFMV»). At the same time the UK has issued a consultation paper¹¹ on rules and guidance to transpose the AIFM directive into UK law by 22 July 2013, while Switzerland has changed its investment fund legislation («Kollektivanlagegesetz – KAG») together with the implementing decree on collective capital investment by the Swiss government that is currently being discussed¹². In the field of tax regulation the double tax treaty between Liechtenstein and the UK in place since 19th December 2012¹³ and the negotiations between the Swiss and the Liechtenstein government on a revised and completed double tax treaty to come into force by beginning 2014 or 2015 have to be noted.

The regulatory tsunami initiated by the Leaders' Statement of the G20 summit in London on 2nd April 2009¹⁴ has created a number of trends for alternative investment fund managers that have and will eventually lead to fur-

ther relocations, especially onshorisation of investment fund structures:

1. The AIFM-Directive substantially increased corporate governance/substance requirements for alternative investment fund managers. This is leading to the so-called «death of advisory model», i.e. (internal or external) fund managers have to have sufficient staff and infrastructure in the country where they are seated to steer portfolio and/or risk management. According to the text of the directive itself at least 2 CEOs have to be employed in the fund managers jurisdiction¹⁵. Many off-shore Private Equity, Hedge Fund or Fund or Hedge Fund structures in the Caribbean Islands or the Channel Islands will either have to beef up their corporate governance substantially (which may lead to costly double functions) or relocate to Switzerland or Liechtenstein where these functions are currently located. The same is the case for a number of self-managed Luxembourg Sicavs, Irish and Malta PLCs in the alternative space as well as for UCITS under the draft UCITS VI Directive¹⁶.
2. Further, any third-country fund structures may no longer be marketed in Europe starting from 22 July 2013 for two years. Due to the Lugano-Convention 2007 European consumer protection law based on EU-AIFMD may be applicable for Swiss private banking («Application of European law by the back door»). The directive itself leaves it to the European member states to allow private placement¹⁷, but looking at the draft laws especially Germany or France seem to close down the longstanding tradition of liberal private placement. This creates another strong driver for onshorisation of offshore fund structures to European countries including Liechtenstein.
3. And last but not least – the Swiss legislator has created the duty for all Swiss asset managers that manage foreign investment funds to apply for a full license by spring 2015 (i.e. within two years starting from the time of application of the revised Swiss Kollektivanlagegesetz in spring 2013)¹⁸. While so-called small fund managers do not have to obtain an authorisation by the Swiss financial supervisory authority («FINMA») by that time, they will eventually have to apply around 2 years later under a new Swiss «Financial Services Act»¹⁹. While the Swiss FINMA is

⁷ Consultation paper dated 19 December 2012 (ESMA/2012/844) – Draft regulatory technical standards on types of AIFMs (www.esma.europa.eu).

⁸ Consultation paper dated 19 December 2012 dated 19 December 2012 (ESMA/2012/845) – Guidelines on key concepts of the AIFMD (www.esma.europa.eu).

⁹ VERNEHMLASSUNGSBERICHT DER REGIERUNG BETREFFEND DIE SCHAFFUNG EINES GESETZES ÜBER DIE VERWALTER ALTERNATIVER INVESTMENTFONDS (AIFMG) UND DIE ABÄNDERUNG WEITERER GESETZE vom 6. März 2012 (www.llv.li/pdf-llv-rk_vernehmli_aifmg-2.pdf).

¹⁰ STELLUNGNAHME DER REGIERUNG AN DEN LANDTAG DES FÜRSTENTUMS LIECHTENSTEIN ZU DEN ANLÄSSLICH DER ERSTEN LESUNG BETREFFEND DIE SCHAFFUNG EINES GESETZES ÜBER DIE VERWALTER ALTERNATIVER INVESTMENTFONDS (AIFMG) UND DIE ABÄNDERUNG WEITERER GESETZE AUFGEWORFENEN FRAGEN vom 21. Juni 2012 und 6. November 2012 (http://www.llv.li/pdf-rk-llv_bua_132_2012.pdf).

¹¹ CP 12/32 (footnote 2).

¹² Teilrevision der Verordnung des Schweizerischen Bundesrates über die kollektiven Kapitalanlagen, Kollektivanlageverordnung – KKV, Entwurf vom Dezember 2012.

¹³ CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE PRINCIPALITY OF LIECHTENSTEIN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL signed in London on 11 June 2012 (www.legislation.gov.uk).

¹⁴ London Summit – Leaders' Statement 2 April 2009 (www.g20.org/documents).

¹⁵ Art. 8 para 1 Lit c) EU-AIFMD (footnote 1) which is supplemented by Art. 82 Level2 AIFMD (Footnote 5).

¹⁶ CONSULTATION DOCUMENT by the EUROPEAN COMMISSION dated 26 July 2012, Undertakings for Collective Investment in Transferable Securities (UCITS) Product Rules, Liquidity Management, Depositary, Money Market Funds, Long-term Investments (<http://ec.europa.eu>).

¹⁷ Art. 36, 42 and 68 EU-AIFMD (footnote 1).

¹⁸ Art. 13 and 158c KAG revised (footnote 3).

¹⁹ On 28 March 2012 the Swiss government («Bundesrat») engaged the Swiss Department of Finance («Eidgenössisches Finanzdepartement – EFD») to work out a Draft Financial Services Act («Vernehmlass-

known for its rigidity regarding formal requirements and a certain tendency for slow wheel approach, Liechtenstein's FMA provides for a more pragmatic, quick and services oriented approach (in an effort to mimic Luxembourg's regulator CSSF).

In Liechtenstein's financial center²⁰ around CHF 200 billion assets under management («AuM») are managed in Liechtenstein banks²¹, insurers²² etc. and worldwide around CHF 500–1000 billion AuM are managed by Liechtenstein's professional trustees²³ and asset managers²⁴. The trends described above have create opportunities for (alternative investment) fund managers in utilizing Liechtenstein's rising investment fund center (AuM around 40 billion)²⁵ under its' new AIFM-legislation. Needless to mention that Liechtenstein with approximately 1 hour driving distance from Zurich region – as member to the EEA – has all European passports to offer for asset managers, banks and insurers.

II. What is Liechtenstein?

Liechtenstein is a modern country situated in-between Switzerland and Austria. The Liechtenstein private sector benefits from the advantages of its simultaneous membership in the Swiss economic area and the European Economic Area (EEA). Liechtenstein has been using the Swiss franc (CHF) as its official currency since 1925. Liechtenstein has a growing number of OECD-compliant²⁶ international tax treaties with over 30 countries (including US, Germany, UK, Lux, Hong Kong, Canada, Japan etc.) in place.²⁷ Liechtenstein belongs to a long list of important international and multilateral organizations and agreements: Statute of the International Court of Justice, OSZE, Council of Europe, United Nations (UN), European Free Trade Association (EFTA) European Economic Area (EEA), the World Trade Organization (WTO), European Banking Supervision (EBA), International Association of Insurance Supervisors (IAIS), International Organisation of Pension Supervisors (IOPS), International Conference of Banking

Supervisors (ICBS), Moneyval, International Organization of Securities Commissions (IOSCO).



Chart 1: Geographical Location of Liechtenstein.

1. Liechtenstein's Investment Fund Centre

Liechtenstein has a long tradition as a financial centre. The establishment of the first Liechtenstein bank in 1861 started a more than 150 year long tradition. Financial services constitute the second largest economical sector, after industry and manufacturing. Like Switzerland the advantages of Liechtenstein's financial centre include political continuity, stability, legal certainty, the high quality of services, the traditionally high protection of private property and privacy and many years of experience in private banking and wealth management. The solid financial policy of the country's public budgets, short administrative channels and transparent and predictable fiscal and legal frameworks contribute to the attractiveness of the business location. Of the 17 banks licensed in Liechtenstein, seven are subsidiaries of Swiss and Austrian banking groups. Assets registered with Liechtenstein Banks, Insurers, Pension Funds and Investment funds amount for more than CHF 200 billion, out of which Liechtenstein investment funds amount for about 40 billion by the end of 2012. Globally around CHF 500–1'000 billion AuM are managed by Liechtenstein's asset managers and professional trustees.

sungsvorlage eines Finanzdienstleistungsgesetz (FIDLEG)» to be submitted to the Swiss government by autumn 2013 (www.sif.admin.ch).

²⁰ For an overview on Liechtenstein's financial center see the government homepage, www.liechtenstein.li/financialcenter.

²¹ See Liechtenstein Bankers Association, www.bankenverband.li.

²² See Liechtenstein Insurance Association, www.versicherungsverband.li.

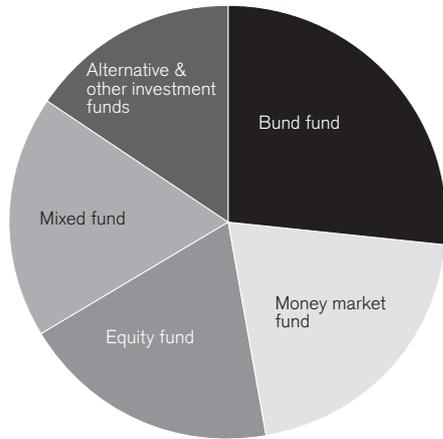
²³ See Liechtenstein Association of Professional Trustees, www.thv.li.

²⁴ See Association of Independent Asset Managers in Liechtenstein, www.vuvl.li.

²⁵ See Liechtenstein Investment Fund Association, www.lafv.li.

²⁶ See <http://www.oecd.org/tax/42340216.pdf>.

²⁷ For more information on Liechtenstein's international tax agreements, see http://www.regierung.li/Ressort_Financen/Entwicklung_internationaler_Steuerabkommen.

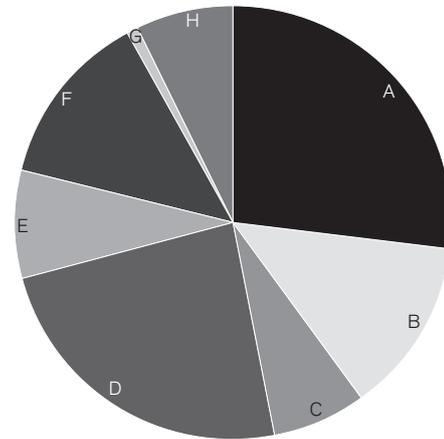


	Total (747)	CHF	37,832,819,223	100 %
■	Bond fund (67)	CHF	10,117,141,805	26.74 %
■	Money market fund (13)	CHF	7,843,327,016	20.73 %
■	Equity fund (195)	CHF	7,199,118,717	19.03 %
■	Mixed fund (106)	CHF	5,846,497,263	15.45 %
■	Alternative & other investment funds (366)	CHF	6,973,573,322	18.05 %

Chart 2: Liechtenstein Investment Funds by 12/30/2012 (Source: Liechtenstein Fund Association)

Liechtenstein banks are known for their financial strength and stability. With an average core capital (Tier 1 ratio) of more than 17 % (17.2 % as of the end of 2011), Liechtenstein banks hold more than twice the capital resources required under Basel II and already meet the ratio required under Basel III. They are among the best-capitalized banks in Europe and in the world (average Tier 1 ratio of 10.4 % in the EU and 5.4 % worldwide). During the financial crisis, in the Principality of Liechtenstein no bank required state aid. Liechtenstein’s itself has AAA rating by Standard & Poor’s in November 2011. Like neighboring Switzerland, Liechtenstein combines many years of practical experience with know-how in private banking and wealth management. Thanks to the vicinity of the University of Liechtenstein and its Institute for Financial Services the financial center can draw on financial expertise and high quality offerings in research and teaching. In 2005, the Swiss Bankers Association established one of the Centers for Young Professionals in Banking (CYP), a competence and training center for young banking talents in Liechtenstein. This ensures a high standard of training in the field of non-academic education as well as high proficiency in English. Most influential lobby groups are the Liechtenstein Bankers Association, Liechtenstein Association of Professional Trustees and the Liechtenstein Investment Fund Association to name just a few.²⁸ Liech-

tenstein is a niche player in the global market – with a share of about 1 % in the global market of cross-border private assets under management.



■	A	27 %	Switzerland
■	B	13 %	Caribbean/Panama
■	C	7 %	Luxembourg
■	D	24 %	UK/Channel Islands/Dublin
■	E	8 %	United States
■	F	13 %	Hongkong/Singapore
■	G	1 %	Liechtenstein
■	H	7 %	Others

Chart 3: Share in worldwide cross-border assets under management by 2011 – total: USD 7800 billion (Source: Boston Consulting Group 2012)

In 2009 the government launched the project «Liechtenstein Investment Fund Center». On 17 January 2012 a steering committee was called into being staffed by the Liechtenstein Financial Market Authority (FMA)²⁹, various lobby groups as well as market participants led by the Office of International Financial Affairs (OIFA)³⁰. The Government steers Liechtenstein’s Investment Fund Centre in the areas of marketing, legislation, taxation and education. Market participants, University of Liechtenstein and FMA are working in 4 Project Groups. Prominent members of the government including the prime minister and the team of the Office for International Financial Affairs (OIFA) drive marketing activities such as road shows and high level conversations with relocation candidates. Since 2009 Liechtenstein has negotiated double tax and tax information exchange agreements with over 30 countries.

²⁸ For more information see footnote 21 to 25.

²⁹ FMA Finanzmarktaufsicht Liechtenstein, see www.fma-li.li.

³⁰ Stabsstelle für internationale Finanzplatzagenden (SIFA), see www.sifa.llv.li.

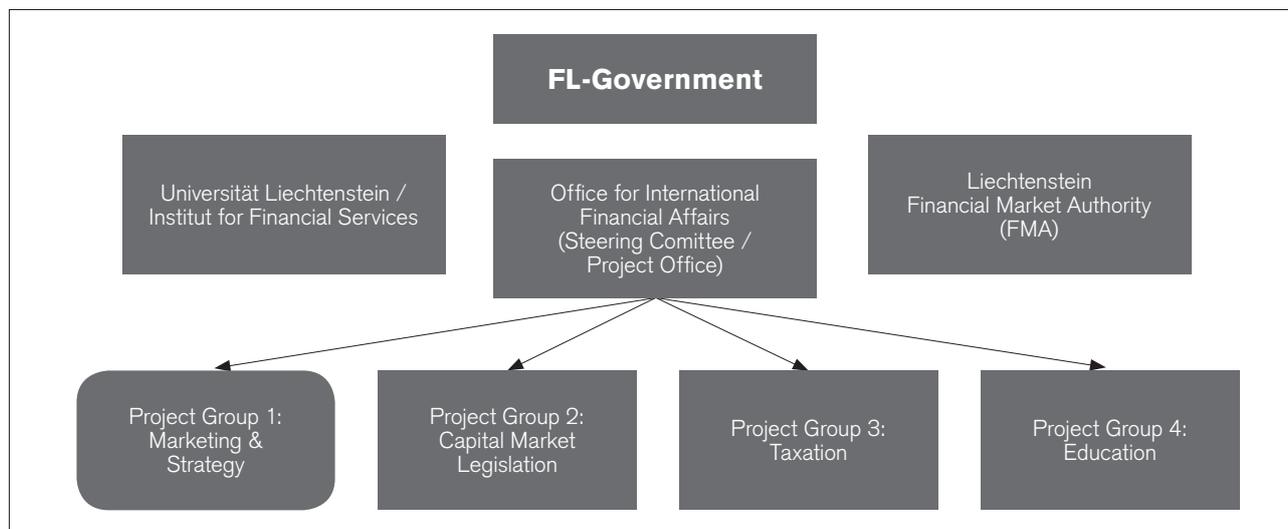


Chart 4: Organisational Structure of Liechtenstein's Investment Fund Centre

2. Legal and Tax System

Liechtenstein's financial centre as well as its investment fund centre Show an innovative one-stop-shop³¹, i.e. the combination of banks, insurance companies, investment funds, company structures and asset management provide a legal and tax environment for comprehensive and tailor-made wealth management solutions. Liechtenstein provides for market access to Switzerland and the European single market: As a gateway to Europe as well as hub for Switzerland Liechtenstein's Financial Centre offers interesting opportunities for financial intermediaries. Liechtenstein's private civil and company law provides for a wide range of company forms and a high degree of liberalism compared with other countries.³² In Liechtenstein a modern, competitive and (unlike Switzerland) EU/EEA-compliant tax system is in place since 1st January 2011 administered by a (like Switzerland) service oriented tax administration.³³ There is a high service orientation of Liechtenstein's authorities, be it Liechtenstein's Financial Regulator (FMA) or Liechtenstein's Tax Authorities: comparatively quick and pragmatic, with electronic template-approach and legal maximum dealing time for approval. Tax rulings as well as regulatory rulings are available to avoid tax and regulatory risks before transactions are implemented.

All investment funds are treated tax transparent in Liechtenstein. This is specifically the case for partnerships (Art. 44 para 1 lit. b SteG). All corporate (i.e. non-partnership) investment funds are generally subject to tax if their domicile or effective place of management is in Liechtenstein at the corporate income tax rate of 12.5% of the taxable net corporate income.³⁴ However, corporate income from the assets managed by investment funds is excluded from the taxable net corporate income as it is to be taxed with the investor.³⁵ Unlike Switzerland, the capital tax has been abolished under the new Liechtenstein Tax Act and there is no withholding tax on interest, dividends or capital gains. Due to the customs and currency treaty with Switzerland³⁶, Swiss federal stamp duty law also applies in Liechtenstein³⁷. A 1% federal stamp duty is generally payable by legal persons upon issuing shares or other participation rights and the increase in their nominal value, provided the share capital exceeds 1 million Swiss francs. Securities transfer tax is due on each change of ownership of taxable securities against payment, provided one of the parties involved or the broker qualifies as a domestic securities dealer and no exemption applies regardless of whether securities dealer act as traders, agents of or for their own account. The issuance and redemption of fund shares is exempted from the securities transfer tax. The purchase, sale or transfer of shares in a Liechtenstein fund (secondary market

³¹ In March 2012 the English magazine Spear's honoured the Liechtenstein financial centre as the «Most Innovative International Financial Center» (www.spearswms.com).

³² See www.gesetze.li and www.gerichte.li.

³³ For an English translation of «the» Liechtenstein Tax Act («Steuer-gesetz – SteG») and «the» Liechtenstein Tax Ordinance («Steuer-verordnung – SteV») see «Liechtenstein Steuerverwaltung» on www.llv.li/amtstellen/llv-stv-home.htm; for an excellent overview on the new tax system in German language see Hosp/Langer, *Steuerstandort Liechtenstein* (2011).

³⁴ See footnote 33.

³⁵ Art. 48 para 1 lit g) SteG, vgl. Vorlage betreffend die Totalrevisi-on des Gesetzes über die Landes- und Gemeindesteuern (BuA 48/2010), S. 50.

³⁶ Vertrag vom 29. März 1923 zwischen der Schweiz und Liechtenstein über den Anschluss des Fürstentums Liechtenstein an das schweizerische Zollgebiet (www.gesetze.li).

³⁷ See Ausführungsbestimmungen betreffend die Durchführung der Bundesgesetzgebung über die Stempelabgaben dated 14 Mai 1974 (www.gesetze.li).

transactions) through a securities dealer (e.g. Liechtenstein bank) does trigger security transfer tax. This generally has to be borne in equal parts by the seller and purchaser. Contractual investment funds and SICAVs are investors exempted from stamp duty. Therefore, 50 % of the stamp duty allocated to contractual investment funds or SICAVs upon the purchase/sale of domestic and foreign securities by the contractual investment funds or SICAV is omitted in these instances. It has to be noted that a SICAF with the legal form of a company limited by shares is not treated as a tax transparent vehicle. Sales of securities and derivatives as well as participation rights in corporations and other associations, including the brokering thereof, are exempt from 8 % Swiss Value Added Tax.³⁸

Liechtenstein companies pay a 12,5 % corporate profit tax on their worldwide profit. Profit attributable to permanent establishments or immovable property located abroad is however excluded from the Liechtenstein tax base. Dividends from participations in domestic or foreign legal persons and capital gains from the sale or liquidation of participations in domestic or legal foreign persons are tax exempt. Interestingly, a deduction for notional interest on equity is granted. The deduction is calculated with a percentage that is defined annually (2012: 4 %) on the so-called modified equity. Asset management services and fund distribution services provided by a company domiciled in Liechtenstein to a Liechtenstein collective investment scheme are generally regarded as VAT-exempt services. Accordingly, the input VAT recovery of the Liechtenstein management company will be restricted.³⁹ Depending on its legal form, the management company of a contractual investment fund is subject to corporate taxes. For management companies the issuance of shares is subject to a 1 % stamp tax, with an allowance of 1 million Swiss francs. The foundation tax is reduced to 0.5 % for capital exceeding 5 million Swiss francs and to 0.3 % for capital exceeding 10 million Swiss francs. Securities transfer tax is due on every change of ownership of taxable securities

against payment, provided one of the parties or the broker involved qualifies as a domestic securities dealer and no exemption applies regardless of whether the involved securities dealer acts as a trader, an agent of or for its own account. The ordinary tax rate amounts to 0.15 % for securities issued by a resident of Switzerland and Liechtenstein and 0.3 % for securities issued by a resident of a foreign country. The securities transfer tax is calculated based on the consideration of the securities traded.

III. Liechtenstein's Investment Fund Centre – Manager Licenses

The Principality of Liechtenstein was the first country to produce a draft act to implement the AIFM directive into national law. While a first draft was written as early as December 2010, the basis of the draft that was passed on 21 December 2012 was produced by a working group on 6 March 2012.

1. Authorised AIFMs

No alternative investment fund manager (AIFM) may manage an alternative investment fund (AIF) unless it has been authorised under the Liechtenstein AIFMG (Art. 28 AIFMG). Once authorised, the AIFM must



Chart 5: Key requirements for Liechtenstein AIFMs under AIFM legislation

comply with the conditions for authorisation at all times. The law applies to AIFMs managing all types of funds that are not covered by the UCITS law. The Liechtenstein AIFMG is a liberal transposition of the EU-AIFM-directive requirements. Level 2 and Level 3 measures such as the AIFM implementation directive and ESMA advice are directly applied by Liechtenstein FMA.

³⁸ See Vertrag zwischen dem Fürstentum Liechtenstein und der Schweizerischen Eidgenossenschaft betreffend die Mehrwertsteuer im Fürstentum Liechtenstein dated 28. Oktober 1994; Gesetz vom 22. Oktober 2009 über die Mehrwertsteuer, Art. 21 para 2 no 19 MWStG.

³⁹ See footnote 38.

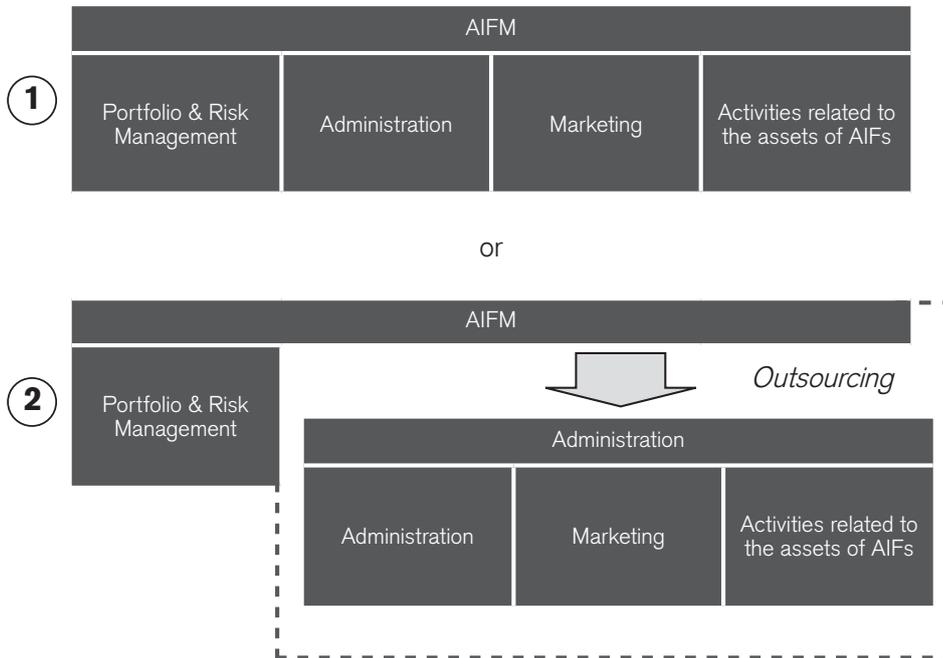


Chart 6: AIFM Areas of Activity and Delegation (Art. 29 AIFMG)

In addition to the transposition of the EU-AIFM-directive, the concept of an authorised administrator and a risk manager will be introduced (Art. 65 ff. AIFMG, for further details see below).

1.1 Areas of Activity and Delegation

An alternative investment fund manager typically covers the following four areas of activity: portfolio and risk management, administrative activities, distribution, asset related services in the alternative investment fund. While administration, distribution and asset related activities can be outsourced, at least a core of portfolio management or risk management activities must be carried out by the fund manager itself (Art. 5 AIFMG). Here the AIFM directive itself foresees a minimum of two fit and proper CEOs that perform the core activity of portfolio management and/or risk management (Art. 29 and 30 AIFMG). As other activities can be outsourced, the Alternative Investment Fund Manager may – depending on the business plan – be founded with a minimum set up of as little as 2–3 persons. The managers of AIFs should at least provide investment management services. AIFMs are generally allowed to delegate the task of carrying out functions on their behalf to third parties, but the delegation of portfolio management or risk management may not be conferred to the depositary or a delegate of the depositary. In order to obtain an authorisation as AIFM either portfolio management or risk management has to be provided by the AIFM in Liechtenstein.

Depending on the size of its venture, an AIFM has two alternatives to obtain an authorisation, either by way of notification with the Liechtenstein Financial Market

Authority (FMA) as a so-called small AIFMs (Art. 3 AIFMG, for further details please see below) or by way of application for a full licence to Liechtenstein's FMA (Art. 28 ff AIFMG). If a license has to be obtained, the FMA has up to three months to grant an authorisation (this time can be extended to a maximum of six months, Art. 31 AIFMG). The authorisation will then not only be valid for Liechtenstein but for all member states of the European Economic Area including the European Union, i.e. all EEA-/EU-passports are available. The authorisation as AIFM allows to offer risk management services and

may include administrative services if the respective conditions are met (Art. 65 AIFMG).

1.2 Minimum capital

AIFMs must own a minimum capital in order to ensure the company's continuity, management's propriety and cover any potential professional liability claims to which they might be exposed (Art. 32 AIFMG). Where the AIFM is internal manager of the AIF, the initial capital of at least 300'000 euros or the equivalent in Swiss francs is required. If an AIFM is appointed as external manager for AIFs, the AIFM must have an initial capital of at least 125'000 euros or the equivalent in Swiss francs. If the value of the AIF portfolio managed by the AIFM exceeds 250 million euros or the equivalent in Swiss francs, the AIFM must provide additional security. That additional security has to be equal to 0,02 % of the amount by which the value of the portfolios of the AIFM exceeds 250 million euros but shall not exceed 10 million euros. In addition to the minimum initial capital requirements above, the initial capital must equal at least one quarter of the fixed costs of the previous year; in the case of newly established management companies, the fixed calculated fixed costs of the management companies provided in the budget shall apply.

2. Small AIFMs

Small AIFMs with up to Euro 100 Million AuM in open-ended funds (including leverage) or with up to Euro 500 Million AuM in closed-ended funds (without leverage) do not have to apply for a fully-fledged license (Art. 3 AIFMG).

2.1 Simplified Procedure

They have to register with FMA as so-called «Small AIFM» using a simplified procedure under the condition that they have engaged an authorised administrator and have regulated details of their internal organisation in an organisation treaty (Art. 3 AIFMG). Provisions regarding minimum substance, valuation of assets and delegation apply. Small AIFMs have a number of alleviations, especially concerning minimum own capital, remuneration policy and internal organisation. Here, AIFMs have to notify FMA and within 3 months an authorisation is granted by the FMA (this time-limit can be extended to a maximum of six months; Art. 3 para 4 with Art. 31 para 5 AIFMG). Small AIFMs may only fund categories established in the AIFM decree (AIFMV).

2.2 Missing EU-Passports but Opt-In

However, small AIFMs may only offer their services locally, they do not benefit from any European passports that regular AIFMs may utilise. Accordingly, small AIFMs may opt in to be treated as regular AIFMs (Art. 3 para 8 AIFMG) in order to take advantage of full set of European passports.

3. Other Manager-Licenses

3.1 UCITS-Manager

Since 1st August 2011 UCITS funds and UCITS managers are subject to Liechtenstein UCITS Law (UCITSG and UCITSV)⁴⁰. The law governs the authorisation, supervision and activities of undertakings for collective investment in transferable securities (UCITS) and their management companies. This law applies to UCITS established within Liechtenstein or which are offered to the public in or from Liechtenstein. As member of the EEA, Liechtenstein's UCITS laws are a liberal transposition of the European UCITS directive. This means that fund management companies in Liechtenstein and their UCITS funds benefit from European passports with access to all EU and EEA member states in the European market. For applications for the authorisation of UCITS funds the FMA has ten working days to decide whether it will allow the application, or in case of the first authorisation of a self-managed investment company, one month. This time limit can be extended to a maximum of four or six months, respectively (Art. 10 UCITSG). The management company also needs to obtain authorisation to ensure investor protection and the solvency of the management company in question. The time limit to

obtain this authorisation is also one month, but can also extend to a maximum of six months (Art. 16 UCITSG). As soon as an authorisation has been granted, the management company may commence business not only in Liechtenstein but also in all EU and EEA member states.

3.2 MiFiD-Manager, Administrator and Riskmanager

Further for asset managers MiFiD authorisation by FMA⁴¹ or authorisations as professional trustee by FMA are available that provide access to the entire EU/EEA market. In addition, an authorisation as administrator or risk manager is available under substantially similar conditions as AIFM-authorisation (Art. 65 ff. AIFMG). AIFM that delegate to authorised administrators or risk managers benefit from the legal assumptions that staffing and organisation requirements are fulfilled (Art. 67 AIFMG).

4. Re-Domiciliation to Liechtenstein

The law offers various options enabling foreign companies and funds to relocate and benefit from the well-regulated and well-reputed Liechtenstein Investment Fund Center. Technically an alternative investment fund manager can be moved by transfer of registered offices. This concept of continuity of legal personalities means that any type of company can transfer its registered office or its main place of management to Liechtenstein to become a Liechtenstein entity. The legal personality can be maintained provided that the law of the home country authorises the transfer without its discontinuation. In reality fund manager do not migrate offshore management companies but either set-up new entities onshore for licensing or convert existing advisor companies into AIFMs.

IV. Liechtenstein's Investment Fund Centre – Investment Funds

In the AIFM-Act (AIFMG) and the corresponding decree (AIFMV) the Liechtenstein legislator has created a maximum of liberty. In Liechtenstein there is a broad number of legal forms for investment funds to choose from (Art. 6 ff. AIFMG). Here the fund initiator can select between open ended and closed ended as well as between externally and internally managed legal forms. For relocations of investment funds internationally acknowledge procedures exist (so-called structural measures Art. 76–90 AIFMG). Under the AIFM-passport system

⁴⁰ See Gesetz vom 28. Juni 2011 über bestimmte Organismen für gemeinsame Anlagen in Wertpapieren (UCITSG) and Verordnung vom 5. Juli 2011 über bestimmte Organismen für gemeinsame Anlagen in Wertpapieren (UCITSV; www.gesetze.li).

⁴¹ See Gesetz vom 25. November 2005 über die Vermögensverwaltung (Vermögensverwaltungsgesetz; VVG) and Gesetz vom 9. Dezember 1992 über die Treuhänder (Treuhändergesetz; TrHG; www.gesetze.li), the latter is currently revised.

Liechtenstein based investment funds may be managed by from any European country member to the EEA.

1. Legal forms available for Liechtenstein funds

For alternative investment funds the following legal forms are available:

1.1 Fonds Commune de Placement/FCP

A FCP («Investmentfonds», Art. 7 AIFMG) is created by an agreement for investors and managed by a management company while a depositary takes the safekeeping of assets on behalf of investors. FCPs may also use the term «common contractual fund» or «CCF» (Art. 27 AIFMG)

1.2 Unit Trust

In a unit trust («Kollektivtreuhänderschaft», Art. 8 AIFMG), a number of investors affiliate for the purpose of investing and managing assets on behalf of the investors. Individual investors participate on a pro-rata basis as per their shares and are only liable up to the amount they have invested. Unit Trusts may also use the term «authorised unit trust» or «AUT» (Art. 27 AIFMG).

1.3 Investment Company

Open-ended or closed-ended investment companies («Investment Gesellschaft», Art. 9 AIFMG) may be created in the form of a public limited company, a European company («Societas Europea/SE»), an institution («Anstalt») or a foundation («Stiftung»). The investment company may be managed by its governing body or by an external management company. Investment companies may use the term «open-ended investment company», «OEIC», «société d'investissement à capital variable» or «SICAV», in case of a closed ended company the terms «closed ended investment company», «CEIC», «société d'investissement à capital fixe» or «SICAF».

1.4 Limited Partnership

In a limited partnership («Anlage-Kommanditgesellschaft», Art. 10–13 AIFMG) only one partner is required to be a general partner. All other partners are only liable to the extent of their registered investment. The general partner can either be one or several Liechtenstein or foreign natural or legal persons. Limited partnerships may also use the term «LP», «société en commandite de placements collectives» or «SCPC». The creation of a liberal limited partnership regime for investment funds including liberal taxation was one of the mayor goals of

the AIFMG to make Liechtenstein attractive for private equity and hedge fund managers.⁴²

1.5 Partnership of Limited Partners

In contrast, the partnership of limited partners («Anlage-Kommanditärengesellschaft», Art. 14 AIFMG) does not have any general partner, therefore all Partners are only liable to the extent of their registered investment. The Partnership of Limited Partners is comparable to the Luxemburg SICAR, the American LP or the Swiss KGK. It may use the term «PLP».

1.6 Notification Procedure

All of these fund types are to be registered with the public trade register, shares may or may not constitute securities (Art. 15 AIFMG). Liechtenstein AIFMs generally have to notify and obtain authorisation from FMA on all AIFs located in Liechtenstein or elsewhere in the EEA they intend to manage (Art. 16 para 1 AIFMG). Notification generally can be made in German or English or any other language acknowledged by FMA (Art. 17). Such authorisation will generally be given within 10 working days following a complete notification (Art. 19 AIFMG). In case of hedge funds or certain other investment funds to be marketed to private investors in Liechtenstein a full permission is required (Art. 16 para 2 AIFMG).

2. Re-Domiciliation of funds to Liechtenstein

Liechtenstein legislation pursues to be relocation-friendly. Liechtenstein offers a simple, straightforward process for the re-domiciliation of investment funds, i.e. the migration of an investment fund to another. All types of investment vehicles can be re-domiciled including FCPs or Trusts, which can be merged into Liechtenstein-domiciled structures even though they are not legal persons.

2.1 Cross-Border Merger

In case of a cross-border merger (Art. 76–89 AIFMG), the offshore fund is merged into a Liechtenstein investment fund against the issuance of shares to the shareholder of the offshore fund which is dissolved. Subject to specific conditions the merger results in «universal succession» of assets and liabilities, i.e. all assets and liabilities of the offshore fund are automatically transferred to the Liechtenstein investment fund. The terms of the merger and the method used to calculate the ratio for the share exchange have to be approved by an auditor. To achieve a merger corporate decisions must be taken by the board and/or the shareholders in both the home country and Liechtenstein. Constitutional documents

⁴² See Draft AIFMG dated 6 March 2012 (footnote 9), page 13.

must be amended in order to comply with Liechtenstein law and have to be approved by Liechtenstein FMA.

2.2 Cross-border Transfer of Statutory Seat

Cross-border transfer of statutory seat of investment funds is possible (Art. 90 AIFMG). In case of an investment company the legal personality can be maintained, provided that the law of the home country allows for the transfer without its discontinuation. To achieve this corporate decisions must be taken by the board and/or the shareholders in both the home country and Liechtenstein. Constitutional documents must be amended in order to comply with Liechtenstein law and approved by Liechtenstein FMA.

2.3 Contribution In Kind

Finally an offshore fund may contribute in kind all assets and liabilities to a Liechtenstein fund entity against shares of the Liechtenstein entity and may then be wound up. On liquidation, the shares of the Liechtenstein entity are distributed to the investors. In this case conditions are similar to a cross-border merger (Art. 90 AIFMG).

3. Co-Domiciliation Strategies

A large number of offshore fund structures of UK or Swiss banks, asset managers or professional trustees as well as self-managed onshore fund structures do not fulfil AIFMD (+UCITS VI) standards. For those the following Co-Domiciliation strategies of Liechtenstein's Investment Fund Centre may be considered.

3.1 Transfer of Fund Management

E.g. the fund management may be transferred to Liechtenstein management company. Fund vehicle may stay where they are, e.g. in Luxembourg, Ireland, Scotland or Cayman Islands.

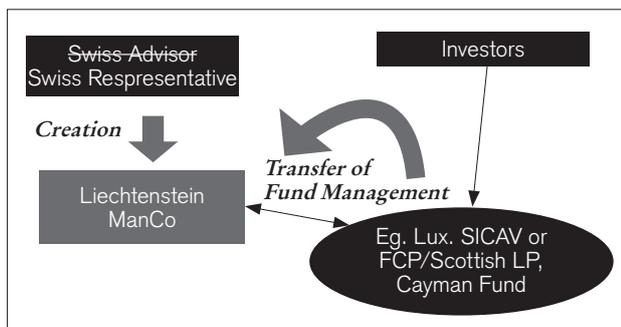


Chart 7: Co-domiciliation Strategy – Transfer of Fund Management

3.2 Interposition of Feeder Entity

In other cases it may be helpful to interpose a Liechtenstein fund manager with a European feeder vehicle or Fund of Fund («FoF») between offshore fund and the investor in order to be able to market in Europe. In this case fund structures including management may stay where they are, e.g. Caymans, BVI, Channel Islands. These cases are regulated in Art. 4 No 12, Art. 16 and Art. 126–128 AIFMG. Double tax or tax information exchange treaties accordingly to the OECD standard must be in place with Liechtenstein and the respective third country, such as e.g. Cayman Islands, Guernsey or Switzerland.

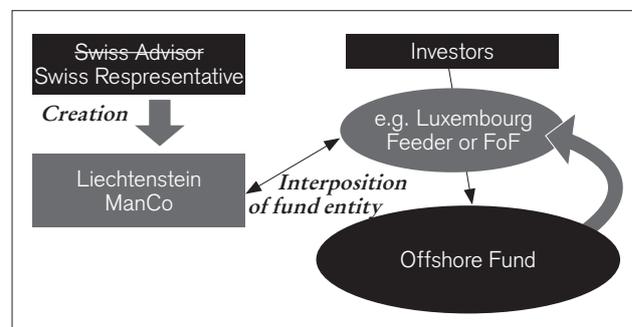


Chart 8: Co-domiciliation Strategy – Interposition of Liechtenstein Feeder Structure

V. Liechtenstein's Investment Fund Centre – European Passports

In alignment with the EU-AIFM-directive among others the following European passports are available for Liechtenstein AIFMs (Art. 112 – 151 AIFMG):

- Investment funds established in Liechtenstein may be pass-ported to other countries within Europe. Upon receipt of a complete notification the waiting period of EU-AIFM-directive of 20 working days is generally reduced for a complete notification with FMA to be 10 working days after which AIFM may start to market EEA-AIF in the other EEA-country (Art. 115 AIFMG).
- Liechtenstein AIFMs may directly establish and manage EEA investment funds (EEA-AIFs) in other EEA countries (Art. 120 – 123 AIFMG). Upon receipt of a complete notification the waiting period of EU-AIFM-directive is generally reduced for a complete notification with FMA to be 10 working days after which AIFM may start to market EEA-AIF in the other EEA-country (Art. 122 AIFMG).
- Liechtenstein AIFMs may establish branches in other EEA countries and may use these branches to establish and manage investment funds (EEA-AIFs) in these or other EEA countries (Art. 120 AIFMG). Upon receipt of a complete notification the waiting

Domiciles		EU investor	AIFM Directive applicable	AIFM marketing regimes	Requirements applicable to AIFM and AIF	Requirements applicable to third-country domiciles
AIFM	AIF					
EU	EU	Yes	Yes	Passport (from 2013)	Full Directive	None
EU	EU	No	Yes	None	Full Directive	None
EU	Non-EU	Yes	Yes	Private placement regimes (2013 to at least 2018)	Full Directive except provisions on depositary, but an entity needs to be appointed to execute depositary functions	Cooperation arrangements AML requirements
				Passport (expected from 2015 onward)	Full Directive	Cooperation arrangements AML requirements Tax agreements
EU	Non-EU	No	Yes	None	Full Directive except provisions on depositary and annual report	Cooperation arrangements
Non-EU	Non-EU	Yes	Yes	Private placement regimes (2013 to at least 2018)	Provisions on transparency, and major holdings and control (if applicable)	Cooperation arrangements AML requirements
				Passport (expected from 2015 onward)	Full Directive; Member State of reference authorization to market non-EU AIFs in EU	Cooperation arrangements AML requirements Tax agreements
Non-EU	Non-EU	No	None	None		

Chart 9: Overview of passports available for Liechtenstein AIFM

period of EU-AIFM-directive is generally reduced for a complete notification with FMA to be 10 working days after which AIFM may start to market EEA-AIF in the other EEA-country (Art. 122 AIFMG).

- Liechtenstein AIFMs may establish and manage third country funds to be marketed outside or inside EEA (Art. 125, 126 and 128 AIFMG).
- Starting in (presumably) 2015 third country AIFMs may be authorised in Liechtenstein as «member state of reference» to establish and manage Liechtenstein or other EEA investment funds and/or market Liechtenstein, EEA or third country funds in EEA (Art. 133 ff. AIFMG).

EEA-/EU-Passports are generally not available for Small-AIFMs that have only notified in a simplified procedure with FMA. However, as Small-AIFMs have the possibility to apply for full AIFM-authorisation with FMA they have effectively access to all EU-/EEA-passports (Art. 3 AIFMG). Looking at current drafts liberal national private placement regimes that are allowed to be continued by Art. 42 and 36 EU-AIFM directive from 2013 to 2018 under certain conditions seem to be dried out in countries like France or Germany.

VI. Why Liechtenstein? – UK perspective

Principality of Liechtenstein and UK have established close links under the Liechtenstein Disclosure Facility (LDF) as well as the double tax treaty signed in December 2012.

1. Attractive Tax Environment

A reduction of the main rate of corporation tax to 23 % from 1 April 2013 was achieved by the Finance Bill 2012 passed by Royal Assent on 17 July 2012.⁴³ Looking at Liechtenstein's tax rate of 12,5 % it may seem attractive to relocate business functions to the Principality of Liechtenstein from a UK tax perspective.

Further, Liechtenstein may be an interesting location for an asset manager as the so-called Liechtenstein Disclosure Facility is a way to raise fund assets from UK citizens that regularise their assets via Liechtenstein financial intermediaries. The UK government and the Principality of Liechtenstein have metalled out a disclosure agreement that gives UK taxpayers with undisclosed accounts the opportunity to disclose income at a reduced penalty with the help of Liechtenstein financial interme-

⁴³ www.hmrc.gov.uk.

diaries. The so-called Liechtenstein Disclosure Facility (LDF) agreement⁴⁴, signed by the two governments on 11 August 2009 along with a broader Tax and Information Exchange Agreement (TIEA), will allow penalties on unpaid tax to be capped at 10 % of tax evaded over the last 10 years providing that the account holder makes a full disclosure to HM Revenue and Customs (HMRC). However, those who have a relationship with Liechtenstein intermediaries and do not make a full disclosure by the end of the program, which runs from September 1, 2009 until 5 April 2016, will find their Liechtenstein accounts closed down and may also face penalties on any unpaid tax of up to 100 %.

2. Acceptance of Common Law Trusts

Liechtenstein has adopted largely anglo-saxon trust legislation (contained in the PGR Code).⁴⁵ A Liechtenstein Trust is set up by a written agreement (Trust Deed) between the trustor (settlor) and trustee(s), or by a written declaration of trust by the trustor, matched by a written acceptance of trust by the trustee. Trustees can be individuals or corporations or associations, while one must be a Liechtenstein-resident individual with appropriate professional qualifications. Trustees have various duties of care towards the trustor and the trust property. They must keep an inventory of their trusteeships and must keep each trust's assets separate from other assets, also if trust assets are deposited with banks they must again be kept separate. Trusts are accepted or may even be set up under foreign law (UK, Channel Islands and Caribbean Islands Trust), but may not have more favourable treatment than would apply under Liechtenstein law (Art. 931 PGR).

3. Liechtenstein-AIFM or Liechtenstein-Branch?

In the light of favourable regulatory, tax and geographic conditions UK Asset Managers may seek to relocate to Liechtenstein. A Liechtenstein AIFM may be established with 2–3 persons based in the greater Zürich-Liechtenstein area to establish a hub for activities in Switzerland and Europe. Such Liechtenstein AIFM may have a UK

branch (Art. 120 AIFMG). An AIFM- or MiFiD-branch in Liechtenstein by a European asset manager may be established quite economically with as little as one person (see Art. 124 AIFMG, Art. 34 VVG).

VII. Why Liechtenstein? – Swiss Perspective

Up to now only asset managers managing Swiss investment funds need to obtain a license by Swiss FINMA. This was changed by the revision of Swiss fund legislation («KAG-Teilrevision»), so that also Swiss asset managers managing foreign investment funds will need to obtain FINMA-authorisation by spring 2015⁴⁶. Exceptions are made for so-called small fund managers with only qualified investors and up to CHF 100 Million AuM in open-ended funds (including leverage) or up to CHF 500 Million AuM in closed-ended funds (without leverage). Small fund managers do not have to apply for FINMA-authorisation but may stay with self-regulatory organisation («SRO», see Art. 2 para 2 lit. b KAG revised). However, all Swiss asset managers will have to obtain obligatory authorisation under the planned Swiss Financial Services Act («FIDLEG») that is planned to come into force by Summer 2014 already.⁴⁷

1. Legal & Practical Considerations

Applying with Swiss FINMA for a Swiss asset manager license may eventually not be the only option for Swiss self regulated asset managers. Especially since Swiss investment funds (as other third country investment funds) are locked out from the European investment fund market until at least 2015 and it is not certain whether they will be admitted at a later stage. Further, as the advisor model is dead in many cases, an asset manager authorisation by FINMA takes a minimum of 4 to 5 employees, with a rigid application procedure of up to 12 months. Small Swiss fund managers (subject to SRO) may not manage European investment funds e.g. based in Liechtenstein.⁴⁸ Further in many instances a Liechtenstein administrator model may be more adequate than the internationally unorthodox Swiss «Fondsleitungsmodell». From a practical point of view an AIFM-, UCITSM- or MiFiD-license in Liechtenstein may be a quick and good solution while substance in Liechtenstein may be obtained commuting within the Greater Zürich-Liechtenstein Area.

⁴⁴ Joint Declaration by the Government of the Principality of Liechtenstein and HMRC Concerning the Memorandum of Understanding Relating to Cooperation in Tax Matters Signed on 11 August 2009; Memorandum of Understanding Between The Government of The Principality of Liechtenstein («Government of Liechtenstein») and HMRC of The United Kingdom of Great Britain and Northern Ireland Relating To Cooperation in Tax Matters; Second joint declaration by the Government of the principality of Liechtenstein and HMRC concerning the memorandum of understanding relating to taxes, and Third Joint Declaration by the Government of the principality of Liechtenstein and HMRC concerning the memorandum of understanding relating to taxes; available under www.hmrc.gov.uk/disclosure/liechtenstein-disclosure.htm.

⁴⁵ See 897ff. Personen und Gesellschaftsrecht («PGR»), www.llv.li.

⁴⁶ Art. 13 and 158c KAG revised (footnote 3).

⁴⁷ See footnote 19.

⁴⁸ See Preamble to AIFMG Draft dated 6th November 2012, page 14; see Art. 20 para 1 lit c) AIFMD.

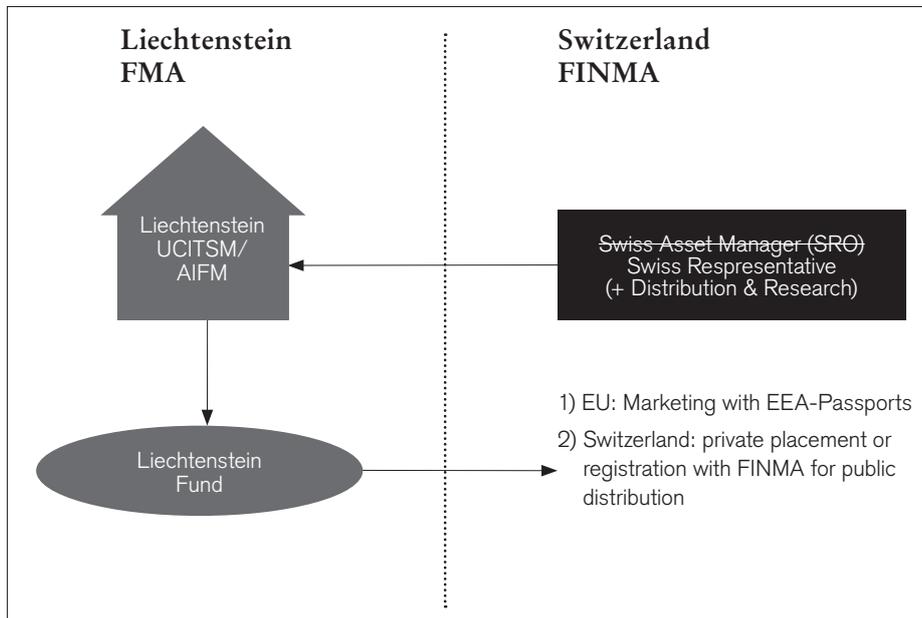


Chart 10: Example for Swiss-Liechtenstein co-domiciliation strategy

When relocating the manager investment funds may stay in Luxembourg or Ireland – this may facilitate a relocation.

2. Distribution in Switzerland with FINMA-authorized Representative

To distribute funds in Switzerland generally a FINMA-authorized representative has to be engaged (Art. 120 and 123 KAG revised).⁴⁹ Further, Liechtenstein UCITS and AIFs may be registered for public distribution in Switzerland. Distribution to qualified investors newly requires a Swiss authorised representative which has to be engaged within 24 months (Art. 120 para 4 and 158d para 4 KAG revised). A pragmatic operating model to achieve an asset manager authorisation and market access to Switzerland and Europe may be the one displayed in chart 10.

VIII. Summary & Outlook

The FMA Liechtenstein does not view itself as «Drive-In» for fund licences for Swiss (or UK) asset managers.⁵⁰ In many cases a straightforward application for authori-

sation with FINMA or FSA may be a tough but most obvious way going forward.

However, Liechtenstein has managed to implement the EU-AIFMD in a quick, clever and liberal manner. It has to be noted that Liechtenstein possess a number of trumps over Switzerland such as the EU/EEA-access from the first day onwards, the vicinity to Greater Zurich-Liechtenstein Area, a pragmatic authorisation procedure with electronic templates and short legal deadlines for the Liechtenstein regulator (=time to market) and the internationally acknowledged administrator-model. It is well armed in the competition with fund centres such as Switzerland, Luxembourg or Cayman Islands. With European legislation becoming more and more flexible co-domiciliation strategies with a Liechtenstein AIFM and a Luxembourg or an Irish fund vehicle or Liechtenstein feeder structures for existing offshore funds (Caribbean or Channel Islands) may be worth thinking about.

From a UK perspective a tax rate reduced by half (effectively around 11%), asset raising via Liechtenstein Disclosure Facility as well as a quick and pragmatic process for establishing an AIFM, UCITS-Manager or MiFiD-Manager or a branch in a modern alpine location (Greater Zurich-Liechtenstein Area) well suited for distribution in Switzerland and Europe may render the decision to relocate to Liechtenstein a «good move».

⁴⁹ For further detail on authorisation and duties of Swiss representatives see the corresponding FINMA-manuals both dated 29 December 2012 under www.finma.ch/d/beaufsichtigte/.../wlpflichten-vertreter-d.pdf and www.finma.ch/d/beaufsichtigte/.../wl_bewilligung_vertreter_d.pdf.

⁵⁰ Citation from Head of Securities of Liechtenstein's FMA at Annual Summit of Swiss Private Equity & Corporate Finance Association (SECA) on the 11. Private Equity & Corporate Finance Conference July 2012.