

Translation of Liechtenstein Law

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Law
of 27 February 2019
**on Deposit Protection and Investor
Compensation at Banks and Investment Firms
(Deposit Guarantee and Investor
Compensation Act; EAG)**

I hereby grant My consent to the following resolution adopted by Parliament:¹

I. General provisions

Article 1

Object and purpose

- 1) This Act governs deposit protection and investor compensation at banks and investment firms.
- 2) It aims to protect the depositors and investors of banks and investment firms and to safeguard trust in the Liechtenstein banking and securities system and the stability of the financial system.
- 3) It serves to transpose the following EEA legislation:

¹ Report and Motion of the Government No. 98/2018, Statement of the Government No. 13/2019

- a) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, 149);²
- b) Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (EEA Compendium of Laws: Annex IX - 31b.01).

4) The version currently in force of the EEA legislation referred to in paragraph 3 is referenced in the promulgation of the decisions of the EEA Joint Committee in the Liechtenstein Law Gazette pursuant to Article 3(k) of the Promulgation Act.

Article 2

Definitions and designations

- 1) For the purposes of this Act, the following definitions apply:
1. "resolution authority" means the authority referred to in Article 4 of the Recovery and Resolution Act;
 2. "investor" means any person who has entrusted money or instruments to a bank or investment firm in connection with investment services;
 3. "investor compensation scheme" means:
 - a) a domestic statutory or contractual protection scheme as referred to in Article 34;
 - b) foreign investor compensation schemes established and recognised in accordance with Article 2(1) of Directive 97/9/EC;
 4. "host Member State" means a host Member State as defined in Article 4(1)(44) of Regulation (EU) No 575/2013;
 5. "bank" means an undertaking as referred to in Article 3(1) of the Banking Act and Article 4(1)(1) of Regulation (EU) No 575/2013;
 6. "designated authority" means:
 - a) the FMA in Liechtenstein;
 - b) a body in another EEA Member State which administers a deposit guarantee scheme as referred to in Article 2(1)(18) of Directive 2014/49/EU or, where the operation of a deposit guarantee scheme in that EEA Member State is administered by a private entity, an

² Article 1(3)(a) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive 2014/49/EU.

- authority designated by that EEA Member State to supervise the scheme;
7. "deposits" means:
 - a) deposits as referred to in Article 3(3)(a) of the Banking Act;
 - b) credit balances which result from funds left in an account or from temporary situations deriving from banking transactions as referred to in Article 3(3) of the Banking Act and which a bank is required to repay under the legal and contractual provisions applicable; credit balances at a bank shall be excluded where:
 - aa) their existence can only be proven by a financial instrument as referred to in Annex 2 Section C of the Banking Act;
 - bb) their principal is not repayable at par; or
 - cc) their principal is only repayable at par under a particular guarantee or agreement provided by a bank or a third party;
 8. "eligible deposits" means deposits that are eligible under Article 8;
 9. "depositor" means the holder or, in the case of a joint account, each of the holders, of a deposit;
 10. "deposit guarantee scheme" means:
 - a) a domestic statutory or contractual protection scheme as referred to in Article 4;
 - b) foreign statutory deposit guarantee schemes as referred to in Article 1(2)(a) of Directive 2014/49/EU;
 - c) foreign contractual deposit guarantee schemes recognised as deposit guarantee schemes as referred to in Article (4)(2) of Directive 2014/49/EU;
 - d) foreign institutional protection schemes recognised as deposit guarantee schemes as referred to in Article 4(2) of Directive 2014/49/EU;
 11. "financial instrument" means a financial instrument as referred to in Annex 2 Section C of the Banking Act;
 12. "covered investments" means eligible funds or financial instruments as referred to in Annex 2 Section C of the Banking Act entrusted by an investor to a bank or an investment firm in connection with investment services and which in the aggregate do not exceed the sum of 30,000 Swiss francs for the individual investor;
 13. "covered deposits" means eligible deposits up to 100,000 Swiss francs or the equivalent in a foreign currency per depositor at any member institution, and temporary high balances as defined in Article 9; for

purposes of Chapter II Section C, temporary high balances as defined in Article 9 shall not be considered covered deposits;

14. "joint account" means an account opened in the name of two or more persons or over which two or more persons have rights that are exercised by means of the signature of one or more of those persons;
15. "home Member State" means a home Member State as defined in Article 4(1)(43) of Regulation (EU) No 575/2013;
16. "member institution" means banks, investment firms, and domestic branches of banks and investment firms from another EEA Member State participating in a Liechtenstein protection scheme as referred to in Article 6 or 35;
17. "unavailable deposit" means a deposit that is due and payable but that has not been paid under the legal or contractual conditions applicable thereto, to the extent that a payout event as referred to in Article 7 has occurred at the member institution taking the deposit;
18. "low-risk assets" means items falling into the first or second category referred to in Table 1 of Article 336 of Regulation (EU) No 575/2013;
19. "available financial means" means cash, deposits and low-risk assets which can be liquidated within a period not exceeding that referred to in Article 12 or 40 and payment commitments up to the limit set out in Article 18(3);
20. "investment services" means services as referred to in Annex 2 Sections A and B(1) of the Banking Act;
21. "investment firm" means an undertaking as referred to in Article 3(2), Article 30u and Article 30v of the Banking Act and Article 4(1)(2) of Regulation (EU) No 575/2013;
22. "payment commitments" means payment commitments of a bank towards a deposit guarantee scheme which are fully collateralised providing that the collateral:
 - a) consists of cash or low-risk assets; and
 - b) is unencumbered by any third-party rights and is at the disposal of the deposit guarantee scheme;
23. "target level" means the available financial means which a protection scheme is required to build up in accordance with Article 17(1), expressed as a percentage of covered deposits of its member institutions;
24. "competent authority" means:
 - a) the FMA in Liechtenstein;
 - b) a competent authority in another EEA Member State as defined in Article 4(1)(40) of Regulation (EU) No 575/2013.

2) The Government shall review the amount referred to in paragraph 1(13) every five years. An earlier review of the amount shall be performed, after consulting the EFTA Surveillance Authority, following the occurrence of unforeseen events such as currency fluctuations.

3) The definitions of the applicable EEA legislation, in particular Directives 2014/49/EU and 97/9/EC, shall apply *mutatis mutandis*.

4) The designations of persons and functions contained in this Act shall apply to persons of female and of male gender.

Article 3

Exclusion of double reimbursement

There shall be no entitlement to double reimbursement by virtue of the fact that reimbursement is paid for one and the same claim under the provisions of Chapter II and III. Claims arising from credit balances in accounts that could be eligible for reimbursement under the provisions of this Act both as a covered deposit and as a covered investment shall be reimbursed under the deposit protection provisions of Chapter II.

II. Deposit protection

A. Protection schemes

Article 4

Statutory and contractual protection schemes

1) The Deposit Guarantee and Investor Compensation Foundation PCC (EAS) shall be considered a statutory protection scheme as referred to in Article 2(1)(10)(a). The organisation of the EAS is governed by the Law on Persons and Companies. The EAS must have a professionally qualified and reliable senior management; Article 19 of the Banking Act shall apply *mutatis mutandis*.

2) The FMA may recognise contractual protection schemes if they:

- a) have a legal form, an organisation, and control mechanisms that enable the protection scheme to perform its tasks and duties under this Act;
- b) have a professionally qualified and reliable senior management; Article 19 of the Banking Act shall apply *mutatis mutandis*.

Article 5

Organisational requirements

1) The protection scheme shall provide cover for unavailable deposits at member institutions to the extent that such deposits are covered deposits.

2) It shall treat as confidential any information entrusted to it or made available to it as a result of its activities, unless the transmission of such information is required by law. It may process personal data, including personal data on criminal convictions and criminal offences, to the extent necessary for the performance of its duties.³

3) It shall lay down, comply with, and maintain effective principles for managing conflicts of interest. These principles shall be laid down in writing and shall be appropriate to the size, complexity, and organisation of the protection scheme.

3a) The persons entrusted with senior management shall at all times be legally and economically independent of the member institutions.⁴

3b) The board of directors of a protection scheme shall at all times consist of at least three members with voting rights, at least one of whom shall be legally and economically independent of the member institutions. The members shall at all times act in the interests of investors and depositors. The protection scheme shall lay down in writing in its regulations effective principles and organisational arrangements to ensure at all times that at least one member of the board of directors is legally and economically independent of the member institutions.⁵

3c) If a payout event as referred to in Article 7 or a compensation event as referred to in Article 36 occurs, those members of the board of directors who are not legally and economically independent of the member institutions directly or indirectly concerned shall lose their voting rights for all decisions of the board of directors concerning the settlement of the payout or compensation event. The protection scheme shall lay down appropriate arrangements for such cases in its regulations.⁶

4) The protection scheme shall have the necessary organisational arrangements in place to guarantee the determination of existing or potential liabilities. In particular, these arrangements shall guarantee the fulfilment

³ Article 5(2) amended by LGBL 2022 No. 112.

⁴ Article 5(3a) inserted by LGBL 2022 No. 112.

⁵ Article 5(3b) inserted by LGBL 2022 No. 112.

⁶ Article 5(3c) inserted by LGBL 2022 No. 112.

of the obligations in a payout event as referred to in Article 7 by building up, replenishing, and investing the deposit guarantee fund. The protection scheme shall in particular make appropriate organisational arrangements to ensure the immediate calculation and prompt repayment of the covered deposits.

5) The protection scheme is entitled to partial or full reinsurance. Its statutory obligations, in particular its payment obligation to depositors in a payout event, shall remain unaffected.

6) The protection scheme shall check its organisation and its systems at least once every three years with a view to ensuring that they function properly (stress tests). The protection scheme may retain information that is solely for the purpose of performing the stress tests and may be used solely for that purpose only for as long as is necessary for that purpose.

7) The protection scheme must inform the FMA of the results of its stress tests. The FMA must transmit the results of the stress tests to the European Banking Authority (EBA).

8) The protection schemes must notify the FMA of the composition of their senior management, their articles of association, their organisation, the identity and the amount of holdings of the direct and indirect shareholders who, as natural or legal persons, have a qualifying holding in the protection scheme or, if there are no qualifying holdings, the identity and amount of holdings of the 20 largest shareholders, and the auditors. In addition, a complete list of all applicable regulations must be submitted to the FMA no later than 31 March of each year. Article 26(2) and (3) of the Banking Act shall apply *mutatis mutandis*.

9) The protection scheme may at any time and without delay request from banks any information that it requires to perform its tasks under this Act; this information shall include, in particular, information on the amount of eligible and covered deposits of each depositor of a bank and information required by the protection scheme for its tasks relating to stress tests. Each protection scheme shall be entitled to require periodic reporting when obtaining such information.

Article 6

Membership of a protection scheme

1) Banks accepting deposits as referred to in Article 3(3)(a) of the Banking Act must belong to a protection scheme as referred to in Article 4.

2) The protection scheme shall admit banks as referred to in paragraph 1 as member institutions.

3) If a bank as referred to in paragraph 1 does not belong to a protection scheme, the FMA shall withdraw its licence. Article 28(2), (3), (5) and (6) of the Banking Act shall apply *mutatis mutandis*.

4) Member institutions shall at all times comply with their obligations under this Act and shall take them into account accordingly in their internal procedures and regulations.

B. Reimbursement of depositors

Article 7

Payout event

1) A payout event occurs when:

- a) the FMA has determined that a member institution is unable, for reasons which are directly related to its financial circumstances, to repay deposits which are due and there is no current prospect of repayment at a later date;
- b) the FMA has issued a prohibition on disbursements with respect to covered deposits of a member institution (Article 35(2)(g) of the Banking Act); or
- c) a judicial authority has made a ruling for reasons which are directly related to the member institution's financial circumstances and which has the effect of suspending the rights of depositors to make claims against it.

2) The FMA shall make the determination referred to in paragraph 1(a) as soon as possible and in any event no later than five working days after becoming aware that the bank has not repaid the deposits.

3) The FMA shall inform the protection scheme to which the member institution concerned belongs of the occurrence of a payout event as referred to in paragraph 1 and shall publish the information to that effect on its website without delay.

4) The FMA and the protection schemes shall inform each other if they detect indications at a bank that are likely to lead to a claim on the protection scheme (mutual early warning mechanism).

Article 8

Eligible deposits

1) Deposits shall be eligible for repayment, with the following exceptions:

- a) deposits made by domestic banks or banks from other EEA Member States or third countries on their own behalf and for their own account, subject to Article 11(3);
- b) own funds as defined in Article 4(1)(118) of Regulation (EU) No 575/2013;
- c) deposits by financial institutions as defined in Article 4(1)(26) of Regulation (EU) No 575/2013;
- d) deposits by asset management companies as defined in Article 2(1) of the Asset Management Act;
- e) deposits by management companies as defined in Article 3(1)(4) of the UCITS Act;
- f) deposits by UCITS as defined in Article 3(1)(1) of the UCITS Act;
- g) deposits by AIFMs as defined in Article 4(1)(2) of the Alternative Investment Fund Managers Act;
- h) deposits by AIFs as defined in Article 4(1)(1) of the Alternative Investment Fund Managers Act;
- i) deposits by management companies as defined in Article 3(1)(e) of the Investment Undertakings Act;
- k) deposits by investment undertakings as defined in Article 3(1)(a) of the Investment Undertakings Act;
- l) deposits by insurance undertakings as defined in Article 2(1) of the Insurance Supervision Act;
- m) deposits by pension funds as defined in Article 5(1)(5) of the Pension Funds Act;
- n) deposits by pension schemes as defined in Article 13(1) of the Occupational Pensions Act or Article 4(1) of the Law on Pension Insurance for State Employees;
- o) deposits by domestic investment firms or investment firms from other EEA Member States or third countries;
- p) deposits by States, governments, and central administrations as well as domestic and foreign regional, local, and municipal authorities;
- q) debt securities issued by a bank (including medium-term notes) and liabilities arising out of own acceptances and promissory notes;

- r) deposits arising out of transactions in connection with which persons have been convicted by final judgment in criminal proceedings for money laundering as defined in § 165 of the Criminal Code or a corresponding foreign provision;
- s) deposits the holder of which has never been identified pursuant to Article 7(1) of the Due Diligence Act, when they have become unavailable.

2) Member institutions shall mark eligible deposits in such a way that they can determine their amount at any time. The protection scheme may at any time request its member institutions to inform it of the eligible deposits of every depositor.

Article 9

Temporary high balances

Eligible deposits over the amount of 100,000 Swiss francs up to the amount of 750,000 Swiss francs shall be deemed to be covered deposits as referred to in Article 2(1)(13), where:

- a) the deposits:
 - 1. result from real estate transactions relating to private residential properties;
 - 2. serve social purposes laid down in law and are linked to particular life events of a depositor such as marriage, divorce, retirement, dismissal, redundancy, invalidity or death; or
 - 3. are based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction; and
- b) the payout event occurs within six months after the amount has been credited or from the moment when such deposits become legally transferable.

Calculation of eligible and covered deposits

Article 10

a) in general

1) The limits referred to in Article 2(1)(13) and Article 9 shall apply to all deposits of a depositor placed with one and the same bank irrespective of the number of accounts, the currency, or the location of the deposits.

2) The reference date for the calculation of the amount of covered deposits is the date on which the payout event occurred.

3) Deposit interest accrued up to the date of the occurrence of the payout event but not yet credited as of that date shall be taken into account when calculating the amount of covered deposits.

4) Deposits with branches of Liechtenstein banks in other EEA Member States shall be taken into account in the calculation pursuant to paragraph 1.

Article 11

b) in special cases

1) In the case of joint accounts, for the calculation of eligible and covered deposits of the individual depositors the proportion of the deposits in the joint account held by each individual depositor shall be taken into account, if specific regulations have been disclosed by the member institution to the depositors holding the joint account with regard to the breakdown of the deposits. In the event that the depositors have omitted to disclose the rules to the member institution regarding the breakdown of deposits held in the joint account, then the deposits in the joint account shall be attributed equally to the depositors. The member institutions shall in addition refer to both of these calculation methods and their respective conditions in the information sheet to be drawn up pursuant to Article 30.

2) Deposits in an account to which two or more persons are entitled as partners in a partnership, an association, a grouping of a similar nature without legal personality or a company corresponding to these forms of company under the law of an EEA Member State or a third country shall be aggregated and treated as if made by a single depositor for the purpose of calculating eligible and covered deposits.

3) If a depositor is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before a payout event as referred to in Article 7 has occurred. Where several persons are absolutely entitled, the share of each as determined in accordance with paragraph 2 shall be taken into account when the covered deposits are calculated. Such deposits shall be made available to the person who is absolutely entitled within a period of three months.

4) In the case of trust accounts that have been disclosed, the trustor shall be deemed to be the depositor. The deposits held in such trust accounts shall be taken into account based on the share held by each trustor

when calculating the eligible deposits of the individual depositors in accordance with the principles that apply for the management of these deposits. This shall also apply for a trustor whose identity is not known to the member institution on the basis of the application of simplified due diligence obligations pursuant to Article 10 of the Due Diligence Act or other provisions set out in law which waive the immediate disclosure of the identity of the trustor towards the bank, if such a trustor's claim can be proven to the protection scheme. Such trusts shall be taken into account when calculating the eligible deposits of individual depositors from the point in time from when the trustors have proven their claim to the protection scheme.

5) When calculating covered deposits, eligible deposits shall not be taken into account to the extent that liabilities of the depositor to the member institution exist which can be offset pursuant to statutory or contractual provisions and which became due before or at the latest at the time the payout event occurred. The member institution shall inform the depositor prior to the conclusion of the contract that liabilities to the member institution are taken into account when calculating covered deposits.

Article 12

Repayment of covered deposits

1) The protection scheme shall, within seven working days of the occurrence of a payout event at one of its member institutions, make available to each depositor of that member institution an amount equal to the depositor's covered deposits, provided that the depositor has provided the protection scheme with account details for the transfer, unless a special case of hardship as defined in paragraph 6 exists.

2) The repayment referred to in paragraph 1 shall be made in Swiss francs. If accounts are held in a currency other than Swiss francs, the mean exchange rate on the day on which the payout event occurred shall be used to calculate the amount to be repaid. Member institutions shall inform their depositors that a repayment in the case of a payout event will be made in Swiss francs.

3) The protection scheme shall make the amount referred to in paragraph 1 available without the depositor having to submit an application to the protection scheme. The protection scheme shall without delay obtain from its member institutions the information necessary for the preparation of payouts and shall take appropriate measures to verify and determine the entitlement and amount of the depositors' claims within the period specified in paragraph 1. For this purpose, the protection scheme shall

be entitled to obtain copies of documents with probative value for the purpose of identifying the depositor within the meaning of Article 6 of the Due Diligence Act from the member institution concerned.

4) The protection scheme shall make the amount referred to in Article 9 available only upon application by the depositor; the second sentence of paragraph 1 shall apply *mutatis mutandis*. Depositors shall submit applications in writing to the protection scheme within six months of the occurrence of the payout event, providing evidence of the facts giving rise to the claim. The fact that that period has expired may not, however, be invoked by the protection scheme to deny cover to a depositor who has been unable to assert their right to reimbursement in time. Member institutions shall also inform the depositors in the information sheet to be drawn up pursuant to Article 30 about the deadline for applying for repayment of temporary high balances as referred to in Article 9.

5) By way of derogation from the time limit provided for in paragraph 1, the following time limits for repayment shall apply for the following transitional periods:

- a) until 31 December 2020: 20 working days;
- b) from 1 January 2021 until 31 December 2022: 15 working days;
- c) from 1 January 2023 to 31 December 2025: 10 working days.

6) During the transitional periods set out in paragraph 5, the protection scheme must, at the request of the depositor and within five days of receipt of the request, pay out an appropriate amount of the covered deposits to the depositor to cover the depositor's cost of living, where the protection scheme cannot make the complete amount of covered deposits available to the depositors within seven working days of a payout event occurring. The protection scheme shall undertake the payout of the appropriate amount on the basis of and having checked the application of the depositor, the data that is already available to it, as well as the data to be supplied by the member institutions. The original claim of the depositor for a payout of an amount equal to the amount of the depositor's covered deposits shall be reduced in this instance by the appropriate amount that is paid out by the protection scheme to cover cost of living.

Article 13

Exclusion, deferral and suspension of repayment

1) A repayment of covered deposits shall not be made if there has been no transaction relating to the deposit within the last 24 months and the value of the deposit is lower than the administrative costs that would be

incurred by the protection schemes in making such a repayment. The member institutions of the protection scheme shall inform their depositors of this circumstance in the information sheet to be drawn up pursuant to Article 30.

2) By way of derogation from Article 12, the protection scheme may defer repayment if:

- a) the depositor's claim to repayment by the protection scheme is disputed or cannot be paid out due to missing account details;
- b) the deposit is subject to legal dispute;
- c) the deposit is subject to restrictive measures imposed by a competent authority, a State, or an international organisation which are legally binding for Liechtenstein;
- d) there has been no transaction relating to the deposit within the last 24 months;
- e) the deposit is a temporary high balance as referred to in Article 9;
- f) the deposit is a deposit as referred to in Article 10(4); or
- g) the protection scheme must make a repayment pursuant to Article 28(1) to depositors of a branch in Liechtenstein of a bank from another EEA Member State in Liechtenstein.

3) Payout may be deferred in cases referred to in paragraph 2(a), (b) and (e) until the claim of the depositor is recognised by the protection scheme or until a final ruling has been handed down by a court, or in cases referred to in paragraph 2(c) until the restrictive measure has been rescinded, and in cases referred to in paragraph 2(g) until the necessary means have been made available by the deposit guarantee scheme of the home Member State. In cases referred to in paragraph 2(d) and (f), the payout must be conducted within three months of occurrence of the payout event.

4) When making the amount available in accordance with Article 12(1), Article 18(3) and (4) and Article 18b of the Due Diligence Act shall apply *mutatis mutandis* to the protection scheme. By way of derogation from Article 12, the protection scheme shall suspend repayment if criminal proceedings for money laundering within the meaning of § 165 of the Criminal Code or a corresponding foreign provision are pending against the depositor or another person with a claim to the deposit or with a holding in the deposit, until the Office of the Public Prosecutor notifies the protec-

tion scheme that the criminal proceedings have been discontinued or otherwise terminated or until the courts transmit the copy of final judgments to the protection scheme.⁷

Article 14

Languages used for the repayment procedure

1) Any correspondence between the protection scheme and depositors shall be drawn up:

- a) in the official language that is used by the member institution holding the covered deposit when writing to the depositor; or
- b) in the official language of the EEA Member State in which the covered deposit is located.

2) If a bank operates in another EEA Member State under the freedom to provide services pursuant to Article 30c of the Banking Act or through an agent, the language that was chosen by the depositor when the account was opened must be used.

Article 15

Subrogation of the protection scheme into the depositor's rights

If a protection scheme makes payments to repay depositors in the context of a payout event or a protection scheme makes payments to depositors as part of resolution proceedings, including the application of resolution tools or the exercise of resolution powers in accordance with Article 129 of the Recovery and Resolution Act, then the protection scheme shall subrogate into the rights of these depositors against the member institution concerned for an amount equal to the payments made by the protection scheme to the depositors. In bankruptcy proceedings, these claims of the protection schemes shall rank at the same level as covered deposits.

Article 16

Reporting requirements of the protection scheme

Following the conclusion of a repayment procedure, the protection scheme shall report to its member institutions and to the FMA about how

⁷ Article 13(4) amended by LGBL 2022 No. 112.

the available financial means have been used as well as the level of the deposit guarantee fund.

C. Funding

1. Deposit guarantee fund

Article 17

Endowment of the deposit guarantee fund

1) By 31 December 2028, each protection scheme shall establish a deposit guarantee fund consisting of available financial means in the amount of at least 0.5% of the total covered deposits of the member institutions (target level).

2) In the event that the protection scheme has already had to make cumulative repayments in excess of 0.5% of covered deposits within the period referred to in paragraph 1, the period referred to in paragraph 1 shall be extended to 31 December 2032.

3) Each protection scheme shall ensure that its available financial means are proportionate to their existing and potential liabilities.

4) Compensation for administrative expenditures shall be prescribed separately for the member institutions.

5) The recognition of contributions to the resolution financing arrangement pursuant to Article 124 of the Recovery and Resolution Act towards the target level of the deposit guarantee fund shall not be permitted.

2. Raising of financial means

Article 18

Contributions

1) Each protection scheme shall prescribe annual contributions for its member institutions, insofar as the target level as set out in Article 17(1) has not yet been reached, or once the target level is no longer reached.

2) The member institutions shall ensure the timely payment of the contributions referred to in paragraph 1 to the protection scheme at all times.

3) The contributions of a member institution may include payment commitments; payment commitments may not exceed 30% of the total amount of the available financial means.

4) In the event that the endowment of a deposit guarantee fund falls below 0.5% of covered deposits of the member institutions once the target level has been reached for the first time, then the protection scheme shall collect annual contributions from its member institutions in order to ensure that the target level is once again reached within the following five years.

5) In the event that the endowment of a deposit guarantee fund falls below 0.34% of covered deposits of the member institutions once its target level has been reached for the first time, then the protection scheme shall collect at least annual contributions in order to ensure that the target level is once again reached within six years of dropping below this threshold.

6) In the event that the endowment of a deposit guarantee fund falls below the target level, or in the event that this target level has not yet been reached, then returns from the insolvency estate of a member institution of the deposit guarantee fund affected by a payout event shall be provided up to the amount of the target level of the deposit guarantee fund and shall be taken into account with regard to future contributions to be made by member institutions, unless the returns are to be used in accordance with paragraphs 4 and 5 for the repayment of liabilities from credit operations pursuant to Article 23.

7) Prescribed contributions and extraordinary contributions by the protection scheme shall be executed on the due date, even if the reasons and amounts prescribed are disputed.

8) Member institutions shall be liable for claims for damages assessed by a court against their protection scheme to the extent of their contribution obligations under this Article where the claim arises from violations of provisions of this Act.

Article 19

Extraordinary contributions

1) Each protection scheme shall prescribe and collect in a timely manner extraordinary contributions from its member institutions in an

amount not exceeding 0.5% of their covered deposits per calendar year in the event that the available financial means of a protection scheme, including in the case of the performance of credit operations pursuant to Article 23, are insufficient to repay depositors in a payout event. If the extraordinary contributions are insufficient to ensure this purpose, the protection scheme shall apply for increased extraordinary contributions in accordance with paragraph 3.⁸

2) The amount of the extraordinary contributions of the member institutions as referred to in paragraph 1 shall in principle be measured on the basis of the ratio of the most recently due annual contribution of the member institution as a proportion of the total amount of most recently due annual contributions of the member institutions of a protection scheme.

3) The FMA shall approve the application of a protection scheme to collect extraordinary contributions as referred to in paragraph 1 of more than 0.5% if:

- a) the protection scheme means available from the fund and the extraordinary contributions as referred to in paragraph 1 are insufficient to repay the depositors in a payout event; or
- b) this approach ensures that the financial means of a protection scheme are proportionate to its existing and potential liabilities.
- c) Repealed⁹

4) The FMA shall reject the protection scheme's application in whole or in part if collecting the increased extraordinary contributions would have a serious adverse effect on the solvency or liquidity of a member institution. This is the case if, as a result of paying the increased extraordinary contributions, the member institution would either no longer be allowed to make any distributions under Article 4c of the Banking Act or the member institution would fall more than halfway below the minimum liquidity requirements under Article 412 or 413 of Regulation (EU) No 575/2013. In the latter case, the member institution may assume a stress period within the meaning of Article 412 or 413 of Regulation (EU) No 575/2013 for the next 60 days.

5) The member institutions shall pay their extraordinary contributions for the full amount agreed by the agreed deadline.

⁸ Article 19(1) amended by LGBl. 2023 No. 149.

⁹ Article 19(3)(c) repealed by LGBl. 2023 No. 149.

6) The FMA may grant a deferral of extraordinary contributions upon application by a member institution if the immediate collection of increased extraordinary contributions would result in an insufficient liquidity situation at the member institution. This is the case if, as a result of paying the increased extraordinary contributions, the member institution would fall below the minimum liquidity requirements under Article 412 or 413 of Regulation (EU) No 575/2013. The deferral shall be limited to a maximum of six months, but may be extended upon application by the member institution. If the member institution's liquidity is no longer in jeopardy, the member institution shall immediately pay deferred extraordinary contributions and accrued interest to the protection scheme.

7) A member institution shall enclose with the application referred to in paragraph 6 appropriate documents providing evidence of jeopardy within the meaning of paragraph 6 to the member institution. The evidence shall be examined and confirmed by the member institution's external audit office recognised under Article 37 of the Banking Act.

8) As soon as the member institution that is in arrears fulfils its obligations, the protection scheme shall prescribe a pro rata repayment to the member institutions that paid extraordinary contributions in order to guarantee the protection scheme's ability to function. If expenditures are incurred by other member institutions as a result of the deferral of extraordinary contributions, these expenditures shall be met by the member institution in arrears.

9) Article 18(8) shall apply *mutatis mutandis* to the liability of the member institutions.

Article 20

Consideration of risk-based aspects when raising contributions and extraordinary contributions

1) The contributions and extraordinary contributions of the member institutions shall in principle be calculated on the basis of the amount of covered deposits (basic component) as well as in proportion to the nature of the risks incurred by the respective member institution. When calculating the contributions, the protection scheme shall also take into account the expected fluctuation in the amount of covered deposits as well as the volatility of the assets in the guarantee fund and, if necessary, collect higher contributions to compensate for such fluctuations on a preventive basis.

2) The method for calculating contributions and extraordinary contributions shall be defined by the protection scheme, documented in a comprehensible manner, and submitted to the FMA for approval. In particular, the method shall include risk-based indicators for the probability of default of member institutions and for the losses that may arise from the non-recovery of claims in the event of bankruptcy of a member institution. The method may additionally include consideration of the quality and quantity of on-balance sheet and off-balance sheet exposures, as well as the specifics of the business model of individual member institutions.

3) The FMA shall approve the method for the calculation of contributions and extraordinary contributions of a protection scheme if:

- a) the basic component is calculated on the basis of the proportion of the covered deposits of a member institution in relation to the covered deposits of all member institutions; and
- b) the FMA is of the view that the risk categories, risk indicators, weightings of risk factors and risk categories, and other necessary components prescribed in the method are suitable to handle the nature of the risk of the respective member institution.

4) The FMA shall inform the EBA of the methods that it has approved for the calculation of contributions and extraordinary contributions.

5) Each member institution is obliged to provide the protection scheme with the information required to determine the member institution's potential risk profile. In the event that the required information has not been supplied, the contributions and extraordinary contributions shall be calculated provisionally by the protection scheme on the basis of a potential risk profile. Upon submission of the information required for the calculation of contributions, the protection scheme shall calculate the contributions and extraordinary contributions of the member institution on the basis of the actual information, and shall stipulate the difference to be paid or credited compared to the provisionally remitted contributions and extraordinary contributions.

6) The protection scheme shall inform its member institutions about the method that it applies for calculating contributions and extraordinary contributions. When determining contributions and extraordinary contributions, the protection scheme shall wherever possible refer to available information.

7) Each protection scheme may provide in its articles of association that member institutions, irrespective of the amount of their covered deposits, shall pay a minimum contribution.

Article 21

Investment of the financial means of the deposit guarantee fund

The protection scheme shall invest the available financial means of the deposit guarantee fund in a low-risk and sufficiently diversified manner. The investment strategy shall ensure adequate liquidity in a payout event.

Article 22

Securing and recovering liabilities

1) Execution against the deposit guarantee fund shall be permitted only to secure or recover liabilities effectively incurred by the protection scheme for the deposit guarantee fund.

2) The assets of the protection scheme's deposit guarantee fund may not be pledged, encumbered, or assigned or transferred as collateral or security with legal effect.

3) Claims against the protection scheme and claims attributable to the deposit guarantee fund may not be set off against each other with legal effect.

4) The assets that have been assigned to the deposit guarantee fund shall form a special bankruptcy estate in bankruptcy proceedings (Article 45 of the Insolvency Act).¹⁰

Article 23

Credit operations

1) If claims of depositors in a payout event cannot be satisfied in full and in a timely manner using the financial means held in the deposit guarantee fund, the protection scheme to which a payout event is attributable under Article 7 may, instead of or in addition to raising extraordinary contributions under Articles 19 and 20, carry out credit operations.¹¹

¹⁰ Article 22(4) amended by LGBL 2020 No. 393.

¹¹ Article 23(1) amended by LGBL 2023 No. 149.

1a) If the available financial means of a protection scheme are insufficient to meet the obligations arising from the credit operations under paragraph 1 in a timely manner, it shall prescribe separate contributions to the member institutions. Articles 19 and 20 shall apply *mutatis mutandis*.¹²

2) If the protection scheme takes out credit within the meaning of paragraph 1 from a deposit guarantee scheme in another EEA Member State, it shall take measures to ensure that the credit taken out is repaid in a timely manner and that the target level as set out in Article 17(1) is reached again as soon as possible, including by adjusting the contributions it collects in accordance with Articles 18 and 19.

3. Use of available financial means

Article 24

Purpose of use

1) Available financial means of the protection scheme may be used only for the following purposes:

- a) the reimbursement of depositors in a payout event;
- b) the fulfilment of obligations under Article 23;
- c) the intervention of deposit guarantee schemes in the context of a resolution under Article 129 of the Recovery and Resolution Act;
- d) necessary operating expenses.

2) The protection scheme shall repay extraordinary contributions collected from its member institutions which were not used for one of the purposes specified in paragraph 1 once the reimbursement procedure has been concluded.

¹² Article 23(1a) inserted by LGBL 2023 No. 149.

D. Annual report, audit, reporting, and notifications

Article 25

Annual report and audit

1) The protection scheme shall prepare a financial statement and an activity report (annual report) on an annual basis. The provisions of the Law on Persons and Companies applicable to the protection scheme shall apply *mutatis mutandis*. The protection scheme's fiscal year shall be the calendar year. The annual financial statement shall be prepared in a timely manner to ensure that the submission deadline set out in paragraph 8 is met.

2) The activity report shall contain at least the following information:

- a) information on the activities and financial circumstances of the protection scheme, in particular the amount and investment of available financial means and their use;
- b) information on the amount of the contributions and the current level of the deposit guarantee fund;
- c) information on the calculation of contributions and extraordinary contributions;
- d) information on changes in assets and the endowment of the deposit guarantee fund at the beginning and at the end of the fiscal year; and
- e) information on the costs of managing the deposit guarantee fund.

3) The protection scheme shall monitor and regularly evaluate the appropriateness and effectiveness of principles, methods, and rules for the annual report. Any deficiencies identified shall be remedied without delay.

4) The protection scheme shall report to the FMA on a regular basis, but at least once a year, on the investment strategy, the internal procedures for investment decisions, and any conflicts of interest. If deficiencies are identified, they must be remedied without delay, and this must be reported to the FMA accordingly.

5) The market values of the assets allocated to the deposit guarantee fund shall be monitored on an ongoing basis; identifiable risks and impending losses that have arisen in the fiscal year or in a previous fiscal year shall be taken into account.

6) When calculating the total value of the assets assigned to the deposit guarantee fund as of the cut-off date, identifiable risks and impending losses that have arisen in the fiscal year or in previous fiscal years shall be taken into account, even if these circumstances have only become known between the cut-off date and the date of preparation of the annual financial statement. Necessary value adjustments shall be taken into account in the valuation of individual asset items.

7) The compliance of the protection scheme with the law and ordinances shall be audited by an external audit office recognised under Article 37 of the Banking Act. The external audit office shall comment on this compliance in a written audit report. The audit shall also cover the appropriateness of the organisational structure and the administrative, accounting, and control procedures under this Act. Articles 38 to 40 of the Banking Act shall apply *mutatis mutandis*.

8) The protection scheme shall submit the audited annual report, including the audit report, to the FMA by 31 July following the end of the fiscal year. The annual report shall be published.

9) The FMA is entitled to commission an audit office to conduct an extraordinary audit of the protection scheme. The costs of the extraordinary audit shall be borne by the protection scheme.

10) The Government may provide further details by ordinance, in particular with regard to the auditing of protection schemes in accordance with paragraph 7.

Article 26

Reporting

1) The protection scheme shall report to the FMA on a quarterly basis on:

- a) the amount of the total eligible deposits of its member institutions;
- b) the amount of the total covered deposits of its member institutions;
- c) the number of depositors holding eligible deposits.

2) The protection scheme shall report to the FMA by 31 January of each year as of the reporting date of 31 December:

- a) the extent of the payment commitments of its member institutions;
- b) the market values of the low-risk assets;
- c) the amount and composition of the available financial means of the deposit guarantee fund.

3) The protection scheme shall be entitled to obtain from the member institutions the information necessary for the purposes set out in paragraphs 1 and 2.

4) Reports by a protection scheme pursuant to paragraphs 1 and 2 shall be submitted in a standardised form by means of electronic transmission or electronic data carriers. The FMA may in particular specify technical requirements, scope, and form as well as content and structure for reporting by protection schemes.

5) The FMA shall report to the EBA the total covered deposits of all member institutions as well as the amount and composition of the available financial means of all deposit guarantee funds as of the reporting date of 31 December by 31 March of each year.

Article 27

Notifications

Each protection scheme shall notify the FMA in writing of the following without delay:

- a) any occasions of the deposit guarantee fund falling below the target level, the measures taken to ensure the target level as required by this Act, and the time at which the target level is once again reached;
- b) delays in contribution payments by member institutions;
- c) the collection of extraordinary contributions and their amounts;
- d) credit operations as referred to in Article 23, including all important information;
- e) missing or incomplete submission of information to protection schemes by member institutions;
- f) the withdrawal of a member institution from the protection scheme;
- g) the planned merger of protection schemes;
- h) a member institution joining another protection scheme and the resulting amount of assets in the fund to be transferred;
- i) any change in the composition of the senior management, stating that the requirements of Article 4(1) and 4(2)(b) have been met;
- k) the conclusion and the content of cooperation agreements as referred to in Article 28(3).

E. Cross-border cooperation

Article 28

Branches of banks in other EEA Member States

1) If a bank operates branches in other EEA Member States, deposits accepted there are protected by the protection scheme to which the bank belongs. The repayment of deposits in a payout event shall be made by the host Member State's deposit guarantee scheme in accordance with the instructions and on behalf of the competent protection scheme. The competent protection scheme shall provide the necessary funding prior to the payout and shall compensate the deposit guarantee scheme of the host Member State for the costs incurred.

2) The competent protection scheme shall provide the deposit guarantee scheme of the host Member State with the information necessary for the repayment of deposits in accordance with Article 12 and for the performance of stress tests in accordance with Article 5(6).

3) To ensure effective cooperation, the competent protection scheme must enter into a written cooperation agreement with the deposit guarantee scheme of the host Member State. The competent protection scheme must be able to share information, including personal data, and communicate effectively with the deposit guarantee scheme of the host Member State, its affiliated banks, the competent and designated authorities of the host Member State and, where appropriate, other agencies on a cross-border basis, while maintaining confidentiality. The FMA shall inform the EBA of the existence and content of such cooperation agreements. The absence of such agreements shall be without prejudice to the claims of depositors under Article 58 and of banks under Article 31(3).

Article 29

Branches of banks from other EEA Member States in Liechtenstein

1) If a bank with its registered office in another EEA Member State operates branches in Liechtenstein, then the domestic protection scheme with which the deposit guarantee scheme of the home Member State has concluded a corresponding cooperation agreement shall repay deposits in a payout event. The repayment of the deposits shall be in accordance with the instructions and on behalf of the deposit guarantee scheme of the home Member State, provided that the deposit guarantee scheme of the home

Member State has made the necessary means available to the domestic protection scheme in advance and has repaid any incurred costs. The domestic protection scheme shall not be liable for any acts done in accordance with the instructions given by the deposit guarantee scheme of the home Member State.

2) The protection scheme shall also inform the depositors concerned on behalf of the deposit guarantee scheme of the home Member State and shall be entitled to receive correspondence from those depositors on behalf of the deposit guarantee scheme of the home Member State.

F. Information obligations

Article 30

Depositor information

1) Each protection scheme shall publish on its website the necessary information for depositors, in particular information concerning the provisions regarding the process for repaying deposits and the conditions of deposit protection as envisaged under this Act.

2) Banks shall inform actual and intending depositors, including on their website, about their membership in a protection scheme and the provisions of this Act applicable to the protection of deposits. If the bank accepts deposits through branches in other EEA Member States, the information must also be provided in the official language of the EEA Member State in which the branch is established.

3) Banks must provide depositors with an information sheet on their membership in a protection scheme before concluding a contract on deposit-taking. The website of the protection scheme to which the bank belongs as a member institution shall be indicated on the information sheet. Depositors shall acknowledge the receipt of the information sheet; this acknowledgement may also be provided electronically. The information sheet shall be provided in the language agreed by the member institution and the depositor at the time the account was opened and shall be provided to the depositor at least annually.

4) Depositors shall receive confirmation that the deposits are eligible deposits on their statements of account, including a reference to the information sheet referred to in paragraph 3.

5) Information pursuant to paragraphs 2 to 4 may, for use in advertising, contain only a reference to the protection scheme guaranteeing the product to which the advertisement refers and a factual description of the functioning of the protection scheme. A reference to unlimited coverage of deposits shall be impermissible.

6) Where a member institution operates under different trademarks as defined in Article 3 of Directive (EU) 2015/2436¹³, it shall inform the depositor of this fact and of the fact that the aggregated deposits with that bank constitute the basis for the calculation of covered deposits pursuant to Article 12. In such a case, the bank shall include this additional information in the information sheet to be drawn up pursuant to paragraph 3.¹⁴

7) In the case of a merger, conversion of subsidiaries into branches, or similar operations, depositors shall be informed at least one month before the operation takes legal effect, unless the FMA agrees to a shorter deadline on the grounds of commercial secrecy or financial stability. Depositors shall be given the opportunity, during a three-month period following notification of the merger or conversion or similar operation, to withdraw or transfer to another bank established in Liechtenstein or another EEA Member State their eligible deposits including all accrued interest and benefits insofar as they exceed the coverage level pursuant to Article 2(1)(13) or Article 9 at the time of the operation. The bank may not collect any fee for such withdrawal or transfer.

8) If a depositor uses online banking, the information referred to in this Article may be made available or communicated by electronic means. Where the depositor so requests, it shall be communicated on paper.

9) The Government shall provide further details by ordinance, in particular the special requirements for the information sheet referred to in paragraph 3.

Article 31

Change of protection scheme

1) If a member institution intends to transfer from one protection scheme to another, it shall notify its original protection scheme and the FMA of its intention to do so at least six months in advance. The new

¹³ Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ L 336, 23.12.2015, 1)

¹⁴ Article 30(6) amended by LGBl. 2022 No. 348.

protection scheme shall decide on the application for admission within six months and confirm the bank's intended admission in writing. This confirmation must be sent to the FMA. Until it is admitted, the bank shall continue to contribute to its original protection scheme in accordance with Articles 18 and 19.

2) Within two months of the change of protection scheme, the original protection scheme shall transfer to the new protection scheme the contributions paid by the bank during the 12 months preceding the end of membership, with the exception of extraordinary contributions in accordance with Article 19. This paragraph shall not apply if a bank has been excluded from a protection scheme.

3) If deposits of a bank are transferred to another bank established in Liechtenstein or in another EEA Member State with the consequence that another protection scheme or another deposit guarantee scheme is now responsible for guaranteeing these deposits, the original protection scheme shall transfer to the new protection scheme the contributions paid by the bank during the 12 months preceding the transfer to the other protection scheme or to the other deposit guarantee scheme in proportion to the amount of the covered deposits transferred, with the exception of extraordinary contributions in accordance with Article 19.

4) Existing obligations of the bank towards the original protection scheme, in particular from previous payout events, shall continue to exist following the transfer of the bank to the new protection scheme.

5) If a bank changes its protection scheme, it shall inform its depositors of this fact within one month of the change.

G. Measures against protection schemes and their member institutions

Article 32

Measures against protection schemes

- 1) If a protection scheme violates provisions of this Act, the FMA may:
- a) order the protection scheme, under penalty of a fine, to restore a lawful state of affairs within such period as is reasonable in view of the circumstances of the case;
 - b) in cases of repeated or continued infringements, prohibit the persons entrusted with the senior management of the protection scheme from

managing the protection scheme in whole or in part, unless this would be unreasonable in light of the nature and seriousness of the infringement.

2) The FMA shall withdraw recognition of a protection scheme pursuant to Article 4(2) if the protection scheme:

- a) no longer meets the conditions for recognition;
- b) obtained recognition surreptitiously by providing false information or if the FMA was unaware of significant circumstances; or
- c) systematically or repeatedly violates the legal obligations.

3) The first sentence of Article 28(2) and Article 29 of the Banking Act shall apply *mutatis mutandis* to the withdrawal of recognition of a protection scheme pursuant to Article 4(2).¹⁵

4) If the FMA withdraws recognition of a protection scheme pursuant to Article 4(2), the protection scheme shall inform its member institutions of the withdrawal and notify them that they must join another protection scheme no later than when the withdrawal becomes legally effective. Similarly, the protection scheme whose recognition has been withdrawn shall inform the protection scheme referred to in Article 4(1) of the withdrawal of recognition.

5) The protection scheme whose recognition has been withdrawn shall, after the withdrawal has become legally effective, transfer its available financial means, including any outstanding claims against its member institutions, to the protection scheme referred to in Article 4(1) within five working days.

6) Article 27(1) and the first sentence of Article 27(2) of the Banking Act shall apply *mutatis mutandis* to the lapse of recognition of a protection scheme as referred to in Article 4(2).

Article 33

Measures against member institutions

1) If a member institution does not comply with the obligations incumbent on it as a member of a protection scheme, the protection scheme shall inform the FMA without delay.

¹⁵ Article 32(3) amended by LGBl. 2022 No. 112.

2) If a member institution violates its obligations under this Act or no longer meets the criteria for membership of the protection scheme, the FMA shall, after consulting the respective protection scheme:¹⁶

- a) order the member institution, under penalty of a fine, to restore a lawful state of affairs within such period as is reasonable in view of the circumstances of the case;
- b) in cases of repeated or continued infringements, prohibit the persons entrusted with the senior management of the member institution from managing the member institution in whole or in part, unless this would be unreasonable in light of the nature and seriousness of the infringement.

3) If the measures taken under paragraph 2 fail to secure compliance on the part of the member institution, the protection scheme may, with the consent of the FMA, give not less than one month's notice of its intention to exclude the member institution. If, on expiry of that notice period, the member institution has not complied with its obligations, the protection scheme shall carry out the exclusion. The bank shall inform its depositors within one month of the exclusion from the protection scheme and the legal consequences of the exclusion.

4) Deposits held on the date on which a bank is excluded shall continue to be covered by the protection scheme.

5) If a member institution's licence is withdrawn pursuant to Article 28 of the Banking Act or pursuant to Article 35(3) of this Act, or if a member institution's licence lapses pursuant to Article 27 of the Banking Act, the cover provided for in Article 5(1) shall continue after the withdrawal or lapse of a licence for the deposits accepted at that time.¹⁷

¹⁶ Article 33(2) introductory phrase amended by LGBL 2022 No. 112.

¹⁷ Article 33(5) inserted by LGBL 2022 No. 112.

III. Investor compensation

A. Protection schemes

Article 34

Protection schemes and organisational requirements

1) The Deposit Guarantee and Investor Compensation Foundation PCC (EAS) shall be considered a statutory protection scheme as referred to in Article 2(1)(3)(a). Article 4, 5(2) to (4), and 10 shall apply *mutatis mutandis*.

2) The protection scheme's articles of association shall, in particular, set out in greater detail how contributions are to be collected by the member institutions. The financing capacity of the protection scheme must be proportionate to its existing and potential liabilities. In particular, it must be ensured that the obligations set out in Article 40 can be met in a compensation event.

Article 35

Membership of a protection scheme

1) Banks and investment firms providing investment services under Article 3(4) of the Banking Act must belong to a protection scheme as referred to in Article 34.

2) The protection scheme shall admit banks and investment firms as referred to in paragraph 1 as well as branches of banks and investment firms established in another EEA Member State as member institutions subject to the requirements of Article 45.

3) If a bank or investment firm as referred to in paragraph 1 does not belong to a protection scheme, the FMA shall withdraw its licence. The first sentence of Article 28(2) and Article 29 of the Banking Act shall apply *mutatis mutandis*.¹⁸

4) Member institutions shall at all times comply with their obligations under this Act and shall take them into account accordingly in their internal procedures and regulations.

¹⁸ Article 35(3) amended by LGBI. 2022 No. 112.

B. Compensation of investors

Article 36

Compensation event

- 1) A compensation event occurs when:
 - a) the FMA has determined that a member institution is unable, for the time being, for reasons which are directly related to its financial circumstances, to meet its obligations arising out of investors' claims and there is no current prospect of being able to do so at a later date;
 - b) the FMA has issued a prohibition on disbursements with respect to covered investments of a member institution (Article 35(2)(g) of the Banking Act); or
 - c) a judicial authority has made a ruling, for reasons which are directly related to the member institution's financial circumstances, which has the effect of suspending investors' ability to make claims against the member institution.
- 2) The FMA shall make the determination referred to in paragraph 1(a) as soon as possible and in any event no later than five working days after becoming aware that the member institution has not met its obligations.¹⁹
- 3) The FMA shall inform the protection scheme to which the member institution concerned belongs of the occurrence of a compensation event as referred to in paragraph 1 and shall publish the information to that effect on its website without delay.²⁰
- 4) The FMA and the protection schemes shall inform each other if they detect indications at a member institution that can lead to a claim on the protection scheme (mutual early warning mechanism).²¹

Article 37

Investor compensation

The protection scheme shall provide cover for claims arising out of an investment firm's inability, in accordance with the legal and contractual conditions applicable to it, to:

¹⁹ Article 36(2) inserted by LGBL 2022 No. 112.

²⁰ Article 36(3) inserted by LGBL 2022 No. 112.

²¹ Article 36(4) inserted by LGBL 2022 No. 112.

- a) repay money owed to or belonging to investors and held on their behalf in connection with investment business; or
- b) return to investors any financial instruments belonging to them and held, administered or managed on their behalf in connection with investment business.

Article 38

Exceptions to investor compensation

1) Claims of the following investors shall be excluded from investor compensation:

- a) professional clients as defined in Annex 1(2)(1) of the Banking Act;
- b) investors who have any responsibility for or have taken advantage of certain facts relating to a bank or investment firm affiliated with the protection scheme which gave rise to the financial difficulties of the bank or investment firm or contributed to the deterioration of its financial situation;
- c) other investors who, on the basis of the contractual agreement with the bank or investment firm affiliated with the protection scheme, have chosen the qualification of "professional client" pursuant to Annex 1(2)(2) of the Banking Act.

2) The following shall also be excluded from investor compensation:

- a) claims of other banks or investment firms established in Liechtenstein or in other EEA Member States or in third countries on their own behalf and for their own account, subject to Article 39(4);
- b) investments in connection with transactions on the basis of which persons have been convicted by final judgment in criminal proceedings for money laundering as defined in § 165 of the Criminal Code or a corresponding foreign provision.

Article 39

Calculation of investor compensation

1) The limit referred to in Article 2(1)(12) shall apply to an investor's aggregate claim with one and the same bank or investment firm irrespective of the number of existing investment services, the financial instruments held, the currency, or the location of the investments. Investments

with branches of Liechtenstein banks and investment firms in other EEA Member States shall be taken into account in the calculation.

2) When calculating the limit referred to in Article 2(1)(12), the share of each investor in a joint investment shall be taken into account. In the absence of special provisions, the claims shall be divided equally among the investors.

3) A joint investment shall mean investment business carried out for the account of two or more persons or over which two or more persons have rights that may be exercised by means of the signature of one or more of those persons.

4) If an investor is not absolutely entitled to the investors' claims, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before a determination or ruling has been made in accordance with Article 36. Where several persons are absolutely entitled, the share of each under the arrangements subject to which the investors' claims are managed shall be taken into account when the compensation claim is calculated.

5) Claims in connection with a joint investment to which two or more persons are entitled as partners in a partnership, an association or a grouping of a similar nature without legal personality, or a company corresponding to these forms of company under the law of an EEA Member State or a third country shall be aggregated and treated as if made by a single investor for the purpose of calculating covered investments.

6) The amount of an investor's claim shall be calculated in accordance with the legal and contractual conditions, in particular those concerning set off and counterclaims, that are applicable to the assessment of the amount of the investments. Market value shall be used as a basis where possible.

7) The reference date for the calculation of the amount of covered investments is the date on which the compensation event occurred.

Article 40

Compensation payment

1) An investor's claims may be paid out only if a compensation event as referred to in Article 36 has occurred. The protection scheme shall take appropriate measures to inform the investors of the occurrence of the compensation event.

2) Investors must register their claims in writing with the protection scheme responsible for the member institution within six months of the occurrence of the compensation event, stating the account details. Otherwise, no claim to investor compensation exists, unless the investor was unable to register in a timely manner.

3) The protection scheme shall pay the investor the corresponding investor compensation no later than three months after the date on which the eligibility for repayment and the amount of the claim have been determined. The second sentence of Article 12(1) and Article 12(6) shall apply *mutatis mutandis*. The protection scheme shall be entitled to obtain copies of documents with probative value for the purpose of identifying the investor within the meaning of Article 6 of the Due Diligence Act from the member institution concerned.

4) In wholly exceptional circumstances and in special cases, the FMA may, upon application by the protection scheme, extend the time limit once by a maximum of a further three months. The FMA shall publish its decision on its website.

5) When paying out the claims of an investor in accordance with paragraph 1, Article 18(3) and (4) and Article 18b of the Due Diligence Act shall apply *mutatis mutandis* to the protection scheme. If criminal proceedings for money laundering within the meaning of § 165 of the Criminal Code or a corresponding foreign provision are pending against the investor or another person with a claim to the investment or with a holding in the investment, compensation payments from the investor compensation scheme may be suspended without prejudice to the time limits specified in paragraphs 2 and 3 above until the Office of the Public Prosecutor notifies the protection scheme that the criminal proceedings have been discontinued or otherwise terminated or until the courts transmit the copy of final judgments to the protection scheme.²²

6) The protection schemes shall draw up in detail and at least in the German language the documents on the conditions and formalities to be observed for investor compensation.

Article 41

Subrogation of the protection scheme into the investor's rights

If a protection scheme makes payouts to an investor in the context of a compensation event, then the protection scheme shall subrogate into the

²² Article 40(5) amended by LGBl. 2022 No. 112.

rights of the investor against the member institution concerned for an amount equal to the payments made by it.

C. Annual report, audit, and reporting

Article 42

Annual report and audit

The protection scheme shall prepare a financial statement and an activity report on an annual basis. Article 25 shall apply *mutatis mutandis*.

Article 43

Reporting

1) By 30 June of each year, member institutions shall notify their protection scheme of the amount of the total covered investments and the number of investors entitled to repayment as of the reporting date of 31 December of the previous year.

2) By 31 July of each year, each protection scheme shall notify the FMA of the data showing the extent of its cover obligation and the amount and composition of the available financial means in a compensation event as of the reporting date of 31 December of the previous year.

D. Cross-border cooperation

Article 44

Branches of banks and investment firms in other EEA Member States

If a bank or investment firm operates branches in other EEA Member States, investments accepted there shall be protected by the protection scheme to which the bank or investment firm belongs. If the investor compensation scheme in the other EEA Member State provides supplementary cover as referred to in Article 45, the compensation to be paid by the Liechtenstein protection scheme shall be governed exclusively by the provisions of this Act.

Article 45

*Branches of banks and investment firms from other EEA Member States
in Liechtenstein*

1) Liechtenstein branches of banks and investment firms established in another EEA Member State may voluntarily join a protection scheme in accordance with Article 34 in order to supplement the cover available in the home Member State, provided that the level and/or scope, including the percentage, of the cover of the Liechtenstein protection scheme exceeds the level and/or scope of the cover of the investor compensation scheme in the home Member State.

2) The protection scheme shall apply objective and generally applicable conditions for voluntary membership

3) Admission shall be conditional on a branch meeting the relevant membership obligations, including in particular the payment of all contributions and other charges.

4) If a branch does not meet the obligations, the competent authority of the home Member State which issued the licence shall be notified without delay. In cooperation with the Liechtenstein protection scheme and the FMA, that authority shall take all measures necessary to ensure that the branch meets the obligations.

5) If those measures fail to ensure that the branch meets its obligations, after an appropriate period of notice of not less than 12 months the protection scheme may, with the consent of the competent authority of the home Member State which issued the licence, exclude the branch. The FMA shall be notified without delay.

6) Investment services transacted before the date of exclusion shall continue to be covered after that date by the protection scheme of which the branch was a voluntary member. Investors shall be informed of the withdrawal of the supplementary cover and of the date on which it takes effect.

7) If several protection schemes exist in Liechtenstein and a branch joins such a scheme, that scheme shall be one that covers the category of institution to which the branch belongs or most closely corresponds.

Article 46

Cooperation of the protection schemes

1) Where a branch applies to join a protection scheme in accordance with Article 45(1) for supplementary cover, that scheme shall bilaterally establish with the home Member State's investment compensation scheme appropriate rules and procedures for the payment of compensation to investors at that branch.

2) Notwithstanding, the Liechtenstein protection scheme shall retain full rights to impose its objective and generally applied provisions on participating branches. In particular, it shall be entitled to require the provision of relevant information and to verify such information with the home Member State's competent authorities.

3) The Liechtenstein protection scheme and the host Member State's investor compensation scheme shall cooperate fully with each other to ensure that investors receive compensation promptly and in the correct amounts. In particular, it shall be agreed on how the existence of a counterclaim which may give rise to set-off under either investor compensation scheme will affect the compensation paid to the investor by each scheme.

4) The Liechtenstein protection scheme shall provide the investor compensation scheme of the host Member State with the information necessary for the repayment of the investments in accordance with Article 45.

Article 47

Supplementary compensation

1) The Liechtenstein protection scheme shall meet claims for supplementary compensation as referred to in Article 45(1) once it has been informed by the home Member State's competent authorities of the determination or ruling referred to in Article 36.

2) The Liechtenstein protection scheme shall retain full rights to verify an investor's entitlement according to its own standards and procedures before paying supplementary compensation.

3) The Liechtenstein protection scheme shall be entitled to charge branches for supplementary cover on an appropriate basis. This shall take into account the cover funded by the home Member State's scheme.

4) To facilitate charging, the Liechtenstein protection scheme shall be entitled to assume that its liability will in all circumstances be limited to the excess of the guarantee it has offered over the cover offered by the

home Member State's investment compensation scheme, regardless of whether the home Member State actually pays any compensation in respect of claims by investors within Liechtenstein.

E. Information obligations

Article 48

Investor information

1) Banks and investment firms shall provide their investors with the information necessary to identify the protection scheme to which the bank or investment firm, as well as its branches, belong.

2) Investors shall be informed about the protection scheme, including the level and scope of coverage, in a readily comprehensible manner.

3) Information shall also be given on request concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.

4) The information provided for in paragraphs 1 to 3 shall be drawn up at least in the German language.

5) Information pursuant to paragraphs 1 to 4 may, for use in advertising, contain only a reference to the protection scheme guaranteeing the product to which the advertisement refers and a factual description of the functioning of the protection scheme. A reference to unlimited coverage of investments shall be impermissible.

F. Measures against protection schemes and their member institutions

Article 49

Measures against protection schemes

Article 32 shall apply *mutatis mutandis* to measures against protection schemes.

Article 50

Measures against member institutions

1) Article 33(1) and (2) shall apply *mutatis mutandis* to measures against member institutions.

2) If these measures fail to secure compliance on the part of the member institution, the protection scheme may, with the consent of the FMA, give not less than 12 months' notice of its intention to exclude the member institution. If, on expiry of that notice period, the member institution has not complied with its obligations, the protection scheme shall carry out the exclusion with the consent of the FMA. Investments held on the date on which the member institution is excluded shall continue to be covered by the protection scheme. The excluded bank or investment firm shall inform its investors within one month of the exclusion from the protection scheme and the legal consequences of the exclusion.

3) If a member institution's licence is withdrawn pursuant to Article 35(3), the cover provided for in Article 37 shall continue after the withdrawal of the licence for the investments accepted at the time of the withdrawal of the licence.

IV. Supervision**A. General provisions**

Article 51

Organisation and implementation

The following bodies are mandated to implement this Act:

- a) the Financial market Authority (FMA);
- b) the external audit offices.

Article 52

Official secrecy

1) The authorities and bodies mandated to implement this Act, any other persons consulted by these authorities and bodies, and all representatives of public authorities shall be subject to official secrecy without any

time limits with respect to the confidential information that they gain knowledge of in the course of their official activities.

2) Confidential information as referred to in paragraph 1 may be transmitted in accordance with this Act, the associated ordinance, and corresponding statutory provisions.

3) If liquidation or bankruptcy proceedings have been initiated by a court decision against a bank or investment firm, then confidential information that does not relate to third parties may be used in civil proceedings, as long as it is necessary for the proceedings in question.²³

4) Without prejudice to the criminal law cases, the FMA, all other administrative authorities, courts, and bodies, and other natural and legal persons may use confidential information that they receive in accordance with this Act only for purposes of fulfilling their responsibilities and tasks under this Act or for purposes for which the information was given, and/or in the case of administrative and judicial proceedings that specifically relate to the fulfilment of these tasks. If the FMA, another administrative authority, a court, a body, or person providing the information gives their consent, however, then the authority, the court, the body, or the person receiving the information may use it for other purposes relating to financial market supervision.

5) The FMA may transmit confidential information received from a non-competent authority of another EEA Member State to competent authorities of other EEA Member States.

Article 53

Cooperation of domestic and foreign authorities and bodies

1) In the context of their supervision, the competent domestic authorities and bodies shall work together to the extent necessary for the fulfilment of their responsibilities.

2) The FMA and the resolution authority shall work closely together to fulfil their respective responsibilities under this Act. In addition, the FMA and the resolution authority shall work together with the authorities of other EEA Member States as referred to in Article 3(2) of Directive 2014/49/EU and shall exchange all information necessary for the fulfilment of their responsibilities under Directive 2014/49/EU.

²³ Article 52(3) amended by LGBl. 2020 No. 393.

Article 54

Processing of personal data

1) The competent domestic authorities and bodies may process or have processed personal data, including personal data relating to criminal convictions and offences, to the extent necessary for the fulfilment of their responsibilities.

2) The competent domestic authorities and bodies may transmit to each other and to the competent foreign authorities and bodies in other EEA Member States or third countries personal data, including personal data relating to criminal convictions and offences, to the extent necessary for the fulfilment of their responsibilities.

B. FMA

Article 55

Responsibilities and powers

1) The FMA shall monitor compliance with the provisions of this Act and the associated ordinances and shall take the necessary measures directly or in cooperation with other supervisory bodies.

2) The FMA shall have all necessary powers to fulfil its responsibilities and may in particular:

- a) inspect and request copies of account books, documents, and data carriers of a protection scheme;
- b) demand information from protection schemes and their bodies and summon and question persons;
- c) carry out on-site audits of protection schemes; the power to conduct on-site audits shall extend to the audit of all tasks and obligations of protection schemes under this Act;
- d) have on-site audits of protection schemes carried out by external audit offices and experts;
- e) request existing records of telephone calls and information from the protection scheme;
- f) obtain information from the protection scheme's external audit office.

3) In the case of an audit pursuant to paragraph 2(c) and (d), the audit bodies shall be provided with a written audit assignment. They must identify themselves without being requested to do so and present the audit assignment before the audit commences. The protection scheme concerned must be notified of the audit as soon as the audit activities commence. If advance notice is not likely to frustrate the purpose of the audit and if it make sense to give advance notice in order to facilitate and expedite the performance of the audit in light of organisational preparations to be made by the protection scheme, the audit may be announced before it commences.

4) The protection scheme shall provide the audit bodies with the documents required for the audit, allow them to inspect the account books, documents, and data carriers, and provide requested information. The protection scheme shall grant the audit bodies access to its premises at any time during normal working hours.

5) The rights of the FMA and its audit bodies to information, presentation, and inspection shall extend to all documents and data carriers; this shall also apply if documents or data carriers are kept by or in the safekeeping of a third party or if they are kept or in safekeeping abroad. If the documents to be audited are kept or in safekeeping abroad, the protection scheme shall ensure that the documents for the current fiscal year and at least three previous fiscal years are available in Liechtenstein at all times.

6) The audit bodies may request the information and business documents required for the audit from the senior management and from any person employed in the protection scheme, provided that a circumstance to be audited falls within their scope of responsibilities.

7) The protection scheme shall make suitable premises and aids available to the audit bodies for the purpose of carrying out the audit. If entries or storage rely on data carriers, the protection scheme concerned shall, within a reasonable period of time, make available such aids as are necessary to render documents readable and, where necessary, furnish copies or printouts of documents.

8) Audit bodies must avoid any disruption or obstruction of business operations that is not absolutely necessary during audits pursuant to paragraph 2 (c) and (d).

9) The findings made during the audit shall be recorded in writing in an audit report. The protection scheme shall be given the opportunity to comment.

C. Procedure and legal remedies

Article 56

Procedure

To the extent not otherwise specified in this Act, the provisions of the National Administration Act shall apply to the procedure.

Article 57

Legal remedies

1) Decisions and decrees of the FMA may be appealed within 14 days of service by way of complaint to the FMA Complaints Commission.

2) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service by way of a complaint to the Administrative Court.

D. Judicial dispute settlement

Article 58

Court proceedings

1) Depositors or investors whose claim has not been repaid or recognised within the time limits provided for in Articles 12 and 13 or 40 may, within three years from the date of a determination under Article 7(1) or Article 36, bring proceedings against the protection scheme before the Court of Justice.

1a) Claims referred to in paragraph 1 shall in any case become time-barred five years after the publication of the payout or compensation event as referred to in Article 7(1) or Article 36(1).²⁴

2) The general provisions of civil procedure shall apply to the court proceedings.

²⁴ Article 58(1a) inserted by LGBL 2022 No. 112.

V. Penal provisions

Article 59

Contraventions

1) The FMA shall punish with a fine of up to 100,000 Swiss francs for committing a contravention anyone who:

- a) violates the obligations set out in Article 5(1) to (4) or (6) to (8);
- b) violates the obligations set out in Article 12(1) or (6);
- c) violates the obligations set out in Article 17(1);
- d) violates the obligations set out in Article 18(1), Article 19(1), or Article 23(1a);²⁵
- e) uses available financial means of the protection scheme in violation of Article 24(1);
- f) violates the obligations set out in Article 34;
- g) makes payouts in violation of Article 40(1);
- h) refuses investors' right of guarantee in violation of the second sentence of Article 40(2);
- i) fails to make payouts within the time limit set out in Article 40(3).

2) The FMA shall punish with a fine of up to 60,000 Swiss francs for committing a contravention anyone who:

- a) fails to make contributions, or fails to do so in a timely manner or in the prescribed amount, in violation of the provisions set out in Article 18(2) or Article 19(5);
- b) violates the obligations set out in Article 25(8);
- c) fails to make the reports referred to in Article 26, or does so incompletely or inaccurately;
- d) fails to submit a written notification without delay as set out in Article 27; the initiation and execution of administrative criminal proceedings shall be refrained from if the improperly submitted notification has been remedied subsequently before the FMA becomes aware of this contravention;
- e) violates the information obligations set out in Article 30(1) to (4), (6), or (7);

²⁵ Article 59(1)(d) amended by LGBL 2023 No. 149.

- f) engages in advertising in violation of the provisions set out in Article 30(5);
- g) violates the obligations set out in Article 31;
- h) violates the obligations set out in Article 42;
- i) violates the reporting obligations set out in Article 43;
- k) violates the information obligations set out in Article 48(1) to (4);
- l) engages in advertising in violation of the provisions set out in Article 48(5);
- m) fails to comply with a demand to restore a lawful state of affairs or another decree of the FMA as set out in Article 55.

3) The FMA shall impose fines under paragraph 1 or 2 against legal persons if the contraventions are committed in the course of business of the legal person (underlying offences) by persons who acted either on their own or as members of the board of directors, senior management, management board, or supervisory board of the legal person or pursuant to other leadership positions within the legal person, on the basis of which they:

- a) are authorised to represent the legal person externally;
- b) exercise control in a leading position; or
- c) otherwise have significant influence on the business management of the legal person.

4) For contraventions committed by employees of the legal person, even though not culpably, the legal person shall be responsible also if the contravention was made possible or significantly facilitated by the fact that the persons referred to in paragraph 3 failed to take necessary and reasonable measures to prevent such underlying offences.

5) The responsibility of the legal person for the underlying offence and the criminal liability of the persons referred to in paragraph 3 or of employees referred to in paragraph 4 for the same offence are not mutually exclusive. The FMA may refrain from punishing a natural person if a fine has already been imposed on the legal person for the same infringement and there are no special circumstances preventing a waiver of the punishment.

6) If the offences are committed negligently, the maximum penalties referred to in paragraphs 1 and 2 are reduced by half.

Article 60

Principles of proportionality and efficiency

When imposing fines under Article 59, the FMA shall take the following into account:

- a) with respect to the infringement, in particular:
 1. its gravity and duration;
 2. the profits gained or losses avoided, to the extent they can be quantified;
 3. damage sustained by third parties, to the extent it can be qualified;
 4. possible systemically important consequences;
- b) with respect to the natural or legal persons responsible for the infringement, in particular:
 1. their degree of responsibility;
 2. their financial capacity;
 3. their willingness to cooperate with the FMA;
 4. reporting to the internal reporting system of a bank or investment firm in accordance with Article 22(2)(e) of the Banking Act or to the FMA in accordance with Article 64a of the Banking Act;
 5. previous infringements and measures taken to prevent these infringements from recurring.

Article 61

Responsibility

Where violations are committed in the business operations of a legal person, the penal provisions shall apply to the persons who acted or should have acted on its behalf; the legal person shall, however, be jointly and severally liable for fines and costs.

VI. Transitional and final provisions

Article 62

Transitional provisions

The following measures shall be performed for the first time based on information as of 31 December 2018:

- a) establishment of the target level of the deposit guarantee fund in accordance with Article 17(1);
- b) prescription of contributions to the deposit guarantee fund in accordance with Article 18(1) for the 2019 calendar year;
- c) reporting of information in accordance with Article 26(1).

Article 63

Reference to Directive (EU) 2014/49/EU

1) Where this Act or the associated ordinances refer to provisions of Directive (EU) 2014/49/EU, those provisions shall apply until they have been incorporated into the EEA Agreement as national legal provisions.

2) The full wording of Directive (EU) 2014/49/EU is published in the Official Journal of the European Union at <http://eur-lex.europa.eu>; it can be obtained from the FMA website at www.fma-li.li.

Article 64

Entry into force

1) Subject to expiry of the referendum period without a referendum being called, this Act shall enter into force on 1 June 2019, otherwise on the day following its promulgation.

2) Article 1(3)(a) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive 2014/49/EU.

Representing the Reigning Prince:

signed *Alois*

Hereditary Prince

signed *Adrian Hasler*

Prime Minister