

Banking secrecy in Liechtenstein remains untouched

Various amendments reinforce the reliability of the financial center of Liechtenstein

The financial center of Liechtenstein had to withstand numerous trials and tribulations in 2000. There were hostile comments and untrue assertions in the international Press and the Financial Action Task Force (FATF) of the Organization for Economic Collaboration and Development (OECD) put Liechtenstein on the list of States not cooperating in the prosecution of money laundering offenses. Liechtenstein has reacted to these incidents with various amendments to laws and execution regulations to underpin the security and reliability of Liechtenstein as a financial center. No change has been made in the strict and legally anchored banking secrecy.

Liechtenstein already passed a number of laws for the protection of the financial center against misuse in the 1990's, expressing its determination to support the international community in the struggle against organized crime.

Banking secrecy anchored in the banking law

In detail, it was first of all a question of passing a law on mutual judicial assistance in penal matters (1992) and of a new banking act to enable stricter supervision of the banks and consolidate banking secrecy (1992).

Additions were also made to the Penal Code with money laundering and insider trading being made punishable (1996).

The professional diligence duty in the acceptance of assets was also given a new basis (1996). Since

then, not only the banks are subject to the professional diligence duty but also financial companies, investment undertakings, trust

companies and attorneys-at-law. All these persons and organizations are obliged, when establishing a new business relationship, to check the identity of the client and of the beneficial owner. Furthermore, they must monitor his business transactions in a continuous manner.

Adjustments to new requirements

Experience in recent years had indicated that individual provisions of the package of laws described had to be adapted to new developments

Law on Banks and Finance Companies

Art. 14

Banking Secrecy

1) The members of the bodies of banks and finance companies, their staff and persons acting on behalf of such companies are obliged to maintain confidentiality about facts which are entrusted to them or to which they have access through business connections with customers. The obligation of secrecy is not limited in time.

2) Should facts which are subject to banking secrecy become known to representatives of authorities in the course of their official duties, they must maintain banking secrecy as an official secret.

3) Contraventions shall be punished pursuant to Art. 63 Para. 1.

4) The legal regulations on the obligation to give evidence or information before criminal courts are reserved.

5) If punishable acts pursuant to § 165 (Money laundering) or § 278a StGB (Criminal organization) are strongly suspected, there is a mandatory obligation to notify the Office for Financial Services. Furthermore, there is a right to notify the Public Prosecutor.

The object of bank secrecy is the comprehensive protection without any time limit of the client's private and confidential sphere.

and to stricter international standards. In the meantime, this process of adaptation has largely been completed.

In view of the significance of the financial services sector for the Liechtenstein economy, it was the declared intention of the Government with the reform package to achieve a leading international position to counter the criticism of the FATF but also to secure the general conditions of Liechtenstein as a financial center for the future. The reform package included amendments to laws in the areas of

- international judicial assistance in penal matters;
- the combating of money laundering;
- professional diligence duty in the acceptance of assets.

The individual legal measures taken are explained in more detail below.

Faster mutual judicial assistance in criminal matters

Experience with the previous law on mutual judicial assistance in criminal matters showed that there were shortcomings in the execution of the law and that mutual assistance proceedings could be delayed by possible appeals to various appeal authorities.

In the new law, mutual assistance proceedings will be accelerated by

the dropping of the decision-making procedure in the administrative proceedings. In addition, there will be a clearer delimitation of the competencies of the administration and of the judiciary.

No mutual assistance in fiscal matters

It is important in this connection that Liechtenstein, as before, refuses mutual judicial assistance or the extradition of a person to another State when this is demanded on account of an «infringement of tax, monopoly, customs or currency regulations or of regulations concerning commodity control or foreign trade».

Harsher punishments for money laundering

International efforts to combat money laundering and international crime and the accession of Liechtenstein to Convention No. 141 of the Council of Europe concerning money laundering called for a tightening of the relevant penal provisions in Liechtenstein law.

The amendments adopted by the Liechtenstein Parliament led to stricter penal provisions and to the extension of the catalogue of prior offenses concerning the definition of corruption. Furthermore, in the case of money laundering, the con-

stituent fact of willfulness was dropped and replaced by simple intent which is easier to prove. The absorption of enrichment originating from criminal actions was also redefined.

Professional diligence duty extended

In the course of the revision of the law, the Professional Diligence Duties Act of 22nd May 1996 based on the EC directive was also re-drafted. The control competencies of the Office for Financial Services, the obligation to verify financial transactions and the obligation to notify suspected money laundering have been made stricter.

The most important innovation for foreign investors concerns the identification of the beneficial owner. Up to now, as an exception, it was possible for the verification to be carried out by a person bound by professional secrecy, for instance an attorney or a trustee, who then opened an account at a bank on behalf of the client without disclosing the name of the beneficial owner.

To reinforce the protection of the financial center of Liechtenstein against misuse, this exceptional regulation has been dropped. The principle of «know your customer», in the meantime internatio-

Even third parties acting on behalf of the bank are included in the obligation to maintain confidentiality.

When may banking secrecy be set aside?

Although banking secrecy is comprehensively protected by Liechtenstein legislation, there are cases in the administration of justice when it can be set aside. These cases are precisely defined:

- **concerning private persons**, the secrecy obligation may only be lifted when the client agrees to this;
- **concerning authorities**, a bank may never pass on information without the express authorization of the client;
- **in civil proceedings**, the bank may even claim a right not to give evidence;
- **in criminal proceedings**, the bank is obliged to lift banking secrecy. The court can demand not only information about the fact and the background of the business contact but also private information about the client;
- **in fiscal matters**, the secrecy obligation may not be lifted.

nally accepted, now applies for the banks. This means that the banks are totally integrated in the duty of identification and verification – a ruling which has applied in Switzerland for several years already and is accepted by the international clientele.

Banking secrecy untouched

With the new ruling, the security of the financial center has been enhanced without any concessions being made as regards banking secrecy. In future, when an account is opened, the bank must be informed of the beneficial owners but for its part the bank must observe absolute secrecy.

This obligation covers all information of which it obtains know-

ledge in the exercise of its activities. The Banking Act, which came into force on January 1, 1993, imposes banking secrecy on all persons working for a bank or a financial institution. Authorities encountering facts subject to banking secrecy in the course of their official activities must likewise observe confidentiality. Even third parties acting on behalf of the bank and possibly receiving information subject to banking secrecy are included in the obligation to maintain confidentiality.

The scope and nature of the information protected is likewise defined in a very comprehensive manner. All information communicated to the bank by virtue of business contacts is protected. This includes

both knowledge acquired by the bank from inquiries about clients and also conclusions drawn by it from information received or from its activities on behalf of the client. Information about private and personal matters is also protected in addition to the above.

The objective of the legal regulations is to assure comprehensive

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Strict banking secrecy is an important cornerstone for the success of Liechtenstein as a financial center.

protection for an unlimited time concerning the private and confidential sphere of bank customers. The scope of the secrecy obligation is such that even third parties may profit from it: details of business partners, relatives or acquaintances of the bank client that have been communicated to the bank are likewise subject to banking secrecy.

Advantageous general conditions for investors

Strict banking secrecy is an important cornerstone for the success of Liechtenstein as a financial center. Other cornerstones are the range of professional services offered in the banking and trust sector and the

liberal tax and company legislation. They ensure that the foreign investor finds conditions in Liechtenstein that allow him to organize the investment and management of his assets in accordance with his individual requirements.

Of eminent importance for the future success of Liechtenstein as a financial center is, however, its international reputation. With its latest legal measures, Liechtenstein has made it quite clear that the soundness and security of the financial center enjoys a high priority and that everything will be done to keep out funds from dubious sources.

F.L.BULLETIN

Liechtenstein's banking boom continues without a break. Since the country joined the European Economic Area (EEA) in 1995, the number of banks has risen from five to sixteen. The new institutions are mainly active in the area of Private Banking.

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While in other countries the deficits of public authorities and the State are increasing, Liechtenstein is in the fortunate position of being able to achieve respectable surpluses in the State Budget every year. Thus the Government accounts for 1999 showed revenues of 948 million francs, expenditures of 631 million francs and a surplus of 317 million francs. The principal source of revenues were taxes and charges which accounted for about 875 million francs.

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Liechtenstein will continue to follow a liberal and competitively oriented economic and tax policy that meets the legitimate needs of clients for discretion. This assurance was recently given by the Liechtenstein Government at a symposium on financial services at the College of Liechtenstein. Participants were assured in so many words that: «Liechtenstein wants to retain its competitiveness as an economic location which it owes, among other things, to a mild taxation climate and effective banking secrecy. The Government is convinced that it is legitimate to have a liberal system also in respect of taxation.»

Summary of Services

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

ADVOKATURBÜRO

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