AN OPPORTUNITY IN NEW LEGISLATION

MARKUS GITZ, COO AT ACCURO, OUTLINES THE OPPORTUNITIES THE FINANCIAL SERVICES ACT (FIDLEG) AND THE FINANCIAL INSTITUTIONS ACT (FINIG) HOLD FOR SWISS FUND PROMOTERS AND LIECHTENSTEIN PROVIDERS

Markus Gitz has held various positions with well-respected auditing firms and banks, most recently as a member of the board of directors at LLB Treuhand AG in Vaduz. In 2004, he took over the function of chief operating officer at our subsidiary Accuro Fund Solutions AG in Vaduz. After receiving his degree as a fiduciary expert and business economist, he also completed studies on the subject of funds, including Dipl. Fund Officer IAF and CIFS International Fund Strategy.

The introduction of the Financial Services Act (Fidleg) and the Financial Institutions Act (Finig) legislation in Switzerland makes things easier for local service providers. Under these regulations, numerous requirements for partners and fund promoters will be met.

Since the financial crisis of 2008, an unprecedented wave of regulation has reached the member states of the European Union. With Mifid II, the EU Commission has written its masterpiece, which should have been implemented in all member states since 3 January 2018.

Switzerland, geographically located in the midst of this EU affair, is currently following suit with a new financial architecture. Although the fund industry has been accustomed to detailed regulations for a long time, this is undoubtedly the biggest regulatory change the financial sector has undergone in recent years.

The new supervisory laws now constitute cross-cutting regulations in the EU and Switzerland that affect all financial service providers to the same extent.

With the new regulatory cloverleaf Fidleg, Finig and the Financial Infrastructure Act (Finfrag), Switzerland is creating a level playing field for its own financial market and at the same time putting itself on an equal footing with the surrounding Europe.

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Swiss fund promoters and the Liechtenstein fund industry should each benefit from this. Switzerland is still the closest and most powerful business partner to the Liechtenstein financial industry in terms of numbers. Switzerland's adaptation to European regulations can be assessed very positively, and the further potential advantages in this new legislature for Swiss fund promoters and Liechtenstein financial service providers are obvious.

EQUIVALENCE OF PRUDENTIAL SUPERVISION

In many areas, cooperation with financial service providers in third countries presupposes the equivalence of prudential supervision, which is often a complex task.

Switzerland will make every effort to ensure that open market access to the European single market is recognised as equivalent. The EU Commission will review these requirements from the entry into force of the new Swiss financial market legislation. A rapid and positive clarification of this issue should further strengthen cooperation between Switzerland and Liechtenstein.

COMPLIANCE & RISK MANAGEMENT AS A SYSTEM

Adjusted to a more systematic, comprehensive and integrated task, the functions of compliance and risk management now fulfil and review numerous aspects of the new legal requirements. Further, the voluntary implementation of EU regulations in Switzerland creates equivalent systems and facilitates cooperation.

BEHAVIOUR AT THE POINT OF SALE

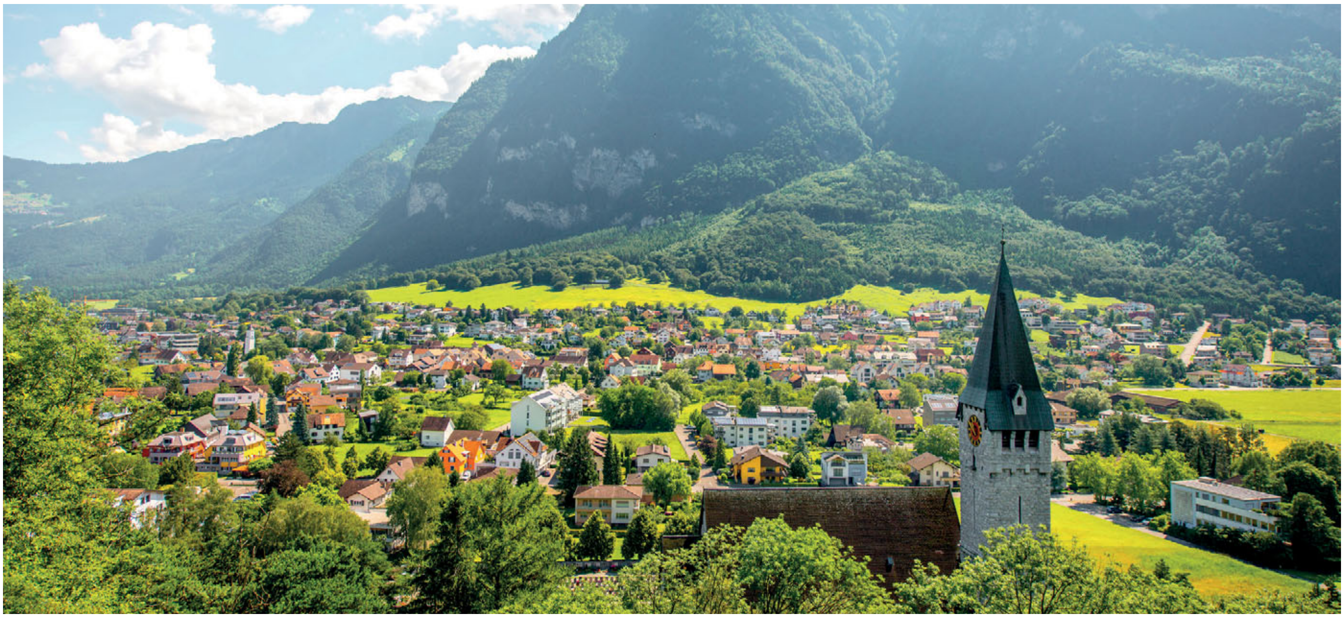
The changed rules of conduct will strengthen and bring clarity to the point of sale under Mifid II and the Swiss financial laws still to be introduced. All cross-border sales activities will be regulated more uniformly and thus simplified.

Requirements for suitability and appropriateness testing are likely to be harmonised. What is regulated in great detail in the EU has at least found its way into Switzerland at the legislative level. The definition of the target markets brings clarification in the EU, while Fidleg seems to have it stipulated in a less clear and uniform way. It can be assumed that the requirements in this area will converge.

Mifid II and the Priips regulation have introduced more extensive documentation requirements in the EU area. Fidleg will also meet these requirements with the basic information sheet, BIB. In Switzerland and throughout Europe, the product information documents will be reviewed by official bodies.

OUTSOURCING OF ANCILLARY ACTIVITIES

Delegations in the field of core activities will be facilitated for Liechtenstein fund providers specialising in private label funds, among others. In view of the fact that, due to Finig, independent asset managers in Switzerland will be subject to exclusive prudential supervision in the foreseeable future. Swiss fund promoters will be raised to a differ-



ent level. Fund management as one of the core activities can still only be delegated to asset managers authorised under the Collective Investment Schemes Act. From a regulatory point of view, however, it should be easier to assign further partial tasks in the value-added chain to asset managers licensed under Finig.

REMAINING DIFFERENCES BETWEEN LIECHTENSTEIN AND SWITZERLAND

The outcome of the procedure for eliminating differences in Switzerland for Fidleg and Finig remains to be seen. And, despite the efforts of the Swiss legislature to ensure that the remaining gaps between Mifid II and the Swiss financial laws are accounted for, some variances do still exist.

Whether Switzerland will fully meet all the requirements for pre- and post-trade transparency, the relocation of transactions to regulated markets, increased investor protection and transparency, the regulation of high-frequency trading, non-discriminatory access to trading and post-trade services, as well as the strengthening of regulatory supervision and cooperation between authorities, is yet to be seen. However, a qualitative increase in Swiss fund promoters will certainly be possible. The Liechtenstein fund centre is likely to become even more attractive for fund promoters, and there will be no further obstacles to the expansion of cooperation with the Swiss financial centre.

WHY LIECHTENSTEIN?

Liechtenstein is well known for its political and economic stability. The Liechtenstein financial centre is competetive and with a high degree of social, legal and economic stability. Moody's and Standard & Poor's gave the country the top-notch AAA rating. The conservative-liberal mindset of the principality's government and people is reflected in the low level of state interference in business activities. As well as being geographical neighbours, Liechtenstein and Switzerland are tightly linked by their economic, customs and monetary union.

EEA membership means that, provided certain conditions are fulfilled, Liechtenstein's fund management companies and its Ucits-and AIF-compliant investment funds enjoy simple, discrimination-free access to the European Union's single market (Passporting).

LIECHTENSTEIN AT A GLANCE

AAA rating
The country is free of public debt and is one of only 12 nations given an AAA rating by S&P.

Proximity to Switzerland
Liechtenstein has close economic and cultural ties with its neighbour, Switzerland. Key elements are the common currency and customs union.

Attractive tax system
With a corporate income tax rate of 12.5%, no withholding taxes and participation exemption, Liechtenstein offers a highly favourable tax environment for fund and asset managers.

Unlimited EU market access
The EU passport for Ucits and AIFs allows unlimited access to the European market for fund providers and asset managers.

Strong banking system
The funds market in Liechtenstein has access to a capable banking system. The capitalisation of Liechtenstein's banks is among the highest in Europe.

Tradition of financial services
The country has an almost 100-year history within financial services. Thus, firms benefit from vastly experienced, high-quality service providers and a highly professional and efficient supervisory authority.

Efficient fund set-up
Funds can be launched in an unbureaucratic and systematic way. The regulatory approval and authorisation of a Ucits or an AIF takes a maximum 10 days or 20 days, respectively, by law!

Political stability
Liechtenstein has exceptional political stability combined with high legal certainty and a liberal and efficient legislative process and court practice.

High quality of life
Liechtenstein offers great living conditions for entrepreneurs and highly qualified employees.