



FACTSHEET

Amendment of the Due Diligence Ordinance in Liechtenstein: implications for existing legal entities

General information

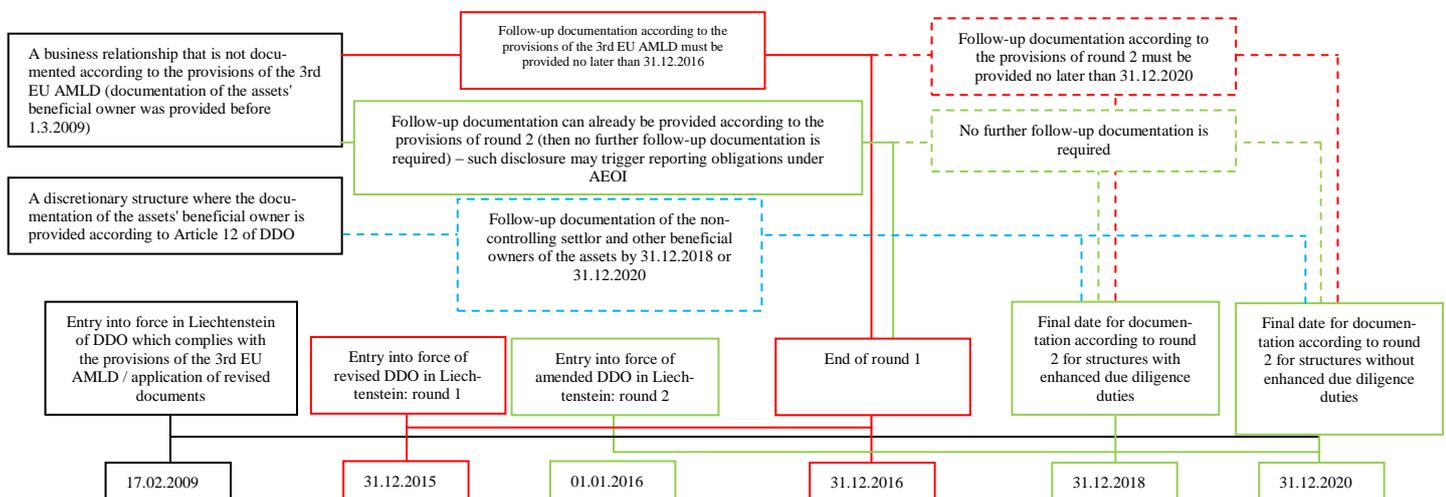
In conjunction with the introduction of the international standard on the Automatic Exchange of Information in Tax Matters, Liechtenstein is implementing certain requirements of the «Common Reporting Standard» (CRS) in its due diligence legislation. To this end, the government has decided to amend the Due Diligence Ordinance (DDO) accordingly. With regard to questions of interpretation, the government's explanations (motive report to first round of amendments and motive report to second round of amendments) and FMA Communication 2015/7 regarding issues related to the establishment of the identity of the beneficial owner under due diligence legislation can also be consulted.

Application of the provisions under the first and second rounds of DDO amendments

The defined first round of DDO amendments came into force on 31 December 2015 and includes transitional provisions which will end on 31 December 2016. The transitional provisions defined in the first round of amendments to the DDO are intended to ensure that follow-up documentation is provided for existing relationships that still do not comply with the definition of beneficial owner under the provisions of the Third EU Anti-Money Laundering Directive. In addition, within the framework of the defined first round of DDO amendments, the definition of the assets' beneficial owner in the case of corporations is being amended in such a way that the "Senior Managing Official" term is adopted under the provisions of the Fourth EU Anti-Money Laundering Directive.

The defined second round of DDO amendments, which came into force on 1 January 2016, includes the definition of beneficial owners in the case of foundations, trusts and establishments structured in a similar way to foundations under the provisions of the Fourth EU Anti-Money Laundering Directive. Implementation of the Fourth EU Anti-Money Laundering Directive is therefore favoured in this particular point with this amendment. These provisions can be applied within the context of follow-up documentation for existing business relationships (if the follow-up documentation is not to be created in accordance with the provisions of the Third EU Anti-Money Laundering Directive) and must be complied with in the event of new business relationships opened after 1 January 2016.

The application of the first round of DDO amendments in the event of existing relationships with legal entities must be explicitly confirmed by the trustees involved. Otherwise, the bank will assume that the information is disclosed within the meaning of the provisions of the second round of DDO amendments.





Follow-up documentation must be provided according to the second round of DDO amendments for all accounts with enhanced due diligence duties that existed as at 31 December 2015 and are documented according to the first round by the end of 2018 and for all accounts without enhanced due diligence duties that existed as at 31 December 2015 and are documented according to the first round of DDO amendments by the end of 2020.

If, in addition to the bank acting as a financial institution, another Liechtenstein financial intermediary subject to Liechtenstein due diligence legislation performs an executive role for a legal entity, it is obligated to provide follow-up documentation on time by submitting the appropriate template form(s) to the bank. If, in addition to the bank acting as a financial institution, there is no other Liechtenstein financial intermediary subject to Liechtenstein due diligence legislation performing an executive role for a legal entity, the obligation to obtain the appropriate sample form within the specified periods lies with the bank.

In the event of all foundations, trusts and establishments structured in a similar way to foundations, no documentation is required within the context of applying the provisions in the first round of DDO amendments for the non-controlling founder or settlor as the beneficial owner of foundations or discretionary structures' assets. The documentation for the non-controlling founder or settlor as the assets' beneficial owner, which is required in addition to that for the controlling founder or settlor who has already been documented, is only required as part of the documentation of the client relationship under the second round of DDO amendments.

If the depositor of the assets exercises a controlling influence on a discretionary structure, the structure is not deemed to be discretionary and a disclosure must be submitted for the depositor with controlling influence under Article 3 DDO (round 1). If the depositor of the assets of a discretionary structure exercises a controlling influence, it is possible to disclose this depositor as part of the AEOI. In addition, members of the board of trustees or board of directors and the trustee and protector (where applicable) shall in the future (round 2) also be deemed to be the assets' beneficial owners and, if applicable, are disclosed to the Liechtenstein tax administration as part of the AEOI.

Application of the sample forms defined in Annex 1 to the DDO

Various standard forms have been defined in co-operation with various Liechtenstein associations, which are to be used in the future. Annex 1 to the DDO contains the various standard forms: Form C for disclosing corporate bodies and Form T for disclosing trusts/foundations or underlyings of trusts/foundations, the form for documenting the recipient of distributions from discretionary-type structures and non-profit or charitable legal entities under Article 12 of DDO Form D. Standard forms C and T are also to be used for providing documentation in the first round of DDO amendments, in addition to documentation in the second round of DDO amendments.

The additionally available Form for determining relevant persons for discretionary-type entities in accordance with Article 12(1) of the Due Diligence Ordinance is only to be used for providing documentation in the first round of amendments to the DDO and for account relationships that existed as at 31 December 2015.

The forms for determining the assets' ultimate beneficial owners are now to be submitted in relation to a specific person and no longer per business relationship. This means that in the future separate forms are to be submitted for each person who holds the position of the beneficial owner in a relevant business relationship. A separate form is also to be used for each beneficial owner when documenting existing account relationships, even if the change only relates to one person.



Documenting the recipient of distributions

The second round of DDO amendments, which came into force on 1 January 2016, provides for recipients of distributions from discretionary-type structures having to be documented in the future at the time of the distribution and, if applicable, disclosed to the Liechtenstein tax administration within the framework of the AEOI. This means that from 1 January 2016, the recipient of distributions must be disclosed using the specified Form D. This obligation applies both to business relationships existing as at 31 December 2015 and new business relationships opened after 1 January 2016. Form D is also to be used if the recipient of distributions is not relevant for AEOI purposes.

In line with the legal provisions, the bank's obligation to document the recipient of distributions differs depending on whether the executive body is a Liechtenstein or foreign person or entity subject to due diligence requirements.

Documentation obligation if a Liechtenstein person or entity subject to due diligence requirements is acting as the executive body for a discretionary structure:

As soon as Form D is obtained, Liechtenstein persons or entities subject to due diligence (under Article 3(1)(k, m, o, t and v)) who establish or manage legal entities must forward it to the "other" persons or entities subject to due diligence with whom the relevant entity maintains a business relationship. "As soon as it is obtained" means, as a basic rule, within three working days. "Other persons or entities subject to due diligence requirements" are banks, for instance, which maintain a business relationship with the relevant entity. The other persons or entities subject to due diligence are reliant on the information from the competent executive bodies of the legal entity as they themselves may not gather information on potential beneficial owners or make their own assessments as to whether or not a specific payment is technically a distribution. For this reason, these other persons or entities may assume that no relevant circumstances have arisen unless they receive information in this regard. Payments may be made by the banks without Form D being present as we may rely on the information of the Liechtenstein person or entity subject to due diligence who is acting as the executive body.

Documentation obligation if no Liechtenstein person or entity subject to due diligence requirements is acting as the executive body for a discretionary structure:

In the event of discretionary legal entities where the executive body is a foreign person or entity subject to due diligence requirements, the Liechtenstein bank, as the entity subject to due diligence requirements under Liechtenstein law, is obligated to ensure that the provisions of the Due Diligence Ordinance are correctly observed. Consequently, in the case of a payment for which an instruction is issued involving a discretionary legal entity in whose relation a foreign person or entity subject to due diligence requirements is recorded as the executive body, it must be ensured that Form D is produced for payments involving distributions.

Documentation obligation in the event of tax-exempt non-profit legal entities:

In the event of purely not-for-profit legal entities which can be shown to be exempt from income tax in the country in which they are established, distributions are not required to be declared using Form D. A declaration must be obtained from the tax administration or comparable authority as proof of tax exemption.

Making changes in relation to the assets' ultimate beneficial owner

After 1 January 2016, changes in relation to the beneficial owners of the assets must be documented in accordance with the second round of DDO amendments. The provisions of the second round are, however, only required to be applied in relation to the change that has triggered a repeat of the process. If, for example, a person is newly identified as a beneficial owner or if persons such as trustees or protectors are replaced, these persons must be documented accordingly under the provisions of the second round of DDO amendments. The assets' existing beneficial owners must be documented in line with the provisions of the first round of DDO amendments, but can naturally also be documented in accordance with the provisions of the second round of DDO amendments. However, new forms must be submitted for all beneficial owners of the assets, regardless of which provisions are applied. Follow-up documentation must, however, be provided for all persons under the requirements of the



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second round of DDO amendments or in accordance with the provisions of the Fourth EU Anti-Money Laundering Directive by no later than the end of 2018 (for account relationships with enhanced due diligence duties) or the end of 2020 (all other account relationships without enhanced due diligence duties).

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