



The Legal 500 Country Comparative Guides

Liechtenstein: Fintech

This country-specific Q&A provides an overview of fintech laws and regulations applicable in Liechtenstein.

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1. What are the sources of payments law in your jurisdiction?

The main sources for payment law in Liechtenstein are the Payment Services Act (PSA) and the Payment Services Ordinance (PSO), which entered into force on 1 October 2019 implementing the Payment Service Directive 2 (Directive [EU] 2015/2366; PSD 2). Provisions concerning payment services and payment service providers can also be found in the Banking Act, the Electronic Money Act, the Due Diligence Act, the Postal Act and their respective ordinances.

2. Can payment services be provided by non-banks, and if so on what conditions?

Pursuant to the PSA, payment services in Liechtenstein can be provided by (i) banks; (ii) electronic money institutions; (iii) postal institutions; (iv) the European Central Bank when not acting in its capacity as monetary authority or other public authorities; (v) the State, the municipalities, municipal associations, and the administration when not acting in their capacity as public authorities; (vi) account information service providers and (vii) payment institutions (as well as their respective EEA counterparts). Therefore, the principal condition to perform payment services in Liechtenstein is to obtain a (respective) licence. If a company wants to provide payment services pursuant to the PSA, it can apply for a licence as a payment institution with the Liechtenstein Financial Market Authority (FMA). The requirements for the licence are set down in the PSA. Within three months after receipt of the full application the FMA must either grant the licence or provide reasons for refusal of the application in writing. The FMA fees for a payment institution license amount to CHF 30'000.00. Pursuant to the PSA, account information service providers do not need a licence, they only need to register with the FMA. The registration is then valid for all EEA member states. For the registration, account information service providers have to provide the FMA with documentation evidencing organisational and internal procedures and professional liability insurance. Within three months of receipt of the full application the FMA must either grant the registration or provide reasons for refusal of the application in writing.

3. What are the most popular payment methods and payment instruments in your jurisdiction?

There are no specific statistics on the popularity of payment instruments in Liechtenstein. However, Switzerland, with its close ties and customs and currency treaty with Liechtenstein could be used as an indicator. According to a Swiss study published in 2019, the proportion of payments made with debit cards was 38,3% and therefore ranking ahead of cash (36%), credit cards (23,3%), mobile payment (2,3%) and crypto currencies (0,2%).

4. What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

The PSA, which implements the PSD 2, grants the right to every payer, with an online

accessible account, to use the services of payment initiation service providers and/or account information service providers. Furthermore, the account-holding payment service providers are now obliged by law to cooperate with the aforementioned service providers, i.e. grant access to transaction data, treat payments executed through a service provider equally to a payment executed by the payer or treat requests for data of a service provider, concerning the account of the payer, in the same way as those of the payer. According to the FMA register (status 30 September 2020) no such service providers are registered.

5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

The General Data Protection Regulation (GDPR), which regulates data protection and privacy for all individual citizens, entered into force in Liechtenstein on 20 July 2018 and is supported by the amended Liechtenstein Data Protection Act. The GDPR provides enhanced requirements and measures for the handling of customer data and imposes severe penalties for misconduct. The customer has been given more rights concerning their data and better protection against the collection of their data without their knowledge, which has led to difficulties for financial service providers and their business operations. Consequently, a lot of new technology and the improvement of existing capacities and systems is needed (by established financial institutions) in order to be able to deal with these challenges. This offers companies and institutions, especially fintechs, great business opportunities to develop new solutions and business models or to market their existing solutions. Surveys show that up to 80% of established organisations have purchased or are planning to purchase solutions to these problems (i.e. network activity monitoring, secure enterprise communications, website scanning and cookie compliance etc.).

6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

The FMA has established a Regulatory Laboratory/Financial Innovation Group in its executive board. The group responds to enquiries from fintech companies and expands the FMA's understanding of the field. As a single point of contact for fintech enquiries, the Regulatory Laboratory has a pre-audit and filter function, a triage function and an allocation and coordination function within the FMA. The FMA also has created a 'FinTech in Liechtenstein' section on its homepage, where the FMA offers initial information regarding the regulatory framework for fintech companies and provides an illustrative overview of possible business models and potentially applicable legislation.

7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

Other than the usual risks for 'new' markets and fields of technology, we envisage no imminent risk to the growth in the fintech market aside from those inherent to any new start up. Liechtenstein actively welcomes and supports the innovation that fintech brings about

and has established itself as a leading jurisdiction for the industry. Further, Liechtenstein has attempted to mitigate part of the risks connected with fintech by creating a unique legal/regulatory framework with the enactment of the 'Law about Token and Trustworthy Technology Service Providers', also known as the Liechtenstein Blockchain Act. However, due to the speed at which the market is innovating, developing and evolving, it is difficult to make a clear forecast for future growth and the associated risks.

8. What tax incentives exist in your jurisdiction to encourage fintech investment?

There are no specific tax incentives for fintech companies in Liechtenstein. However, Liechtenstein has a very attractive tax regime in particular for enterprises. The corporate income tax rate is at 12.5%. Dividends and capital gains, derived from sales or liquidations of investments in shares or similar equity instruments, are generally not included in the taxable income of entities. Further, 4% of the corporate's equity capital can be booked as an expense in order to reduce profits, which means that the effective tax rate is below 12.5 %. In addition, it is possible to offset carry-forward losses for an indefinite period of time.

9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

Due to the Liechtenstein Blockchain Act and the already open attitude of the government and the regulator towards the crypto economy, companies are increasingly preparing to obtain the required licences to implement fully regulated crypto exchange projects (trading of digitalized assets) and/or crypto banking services. Some projects are start ups with typical investing schemes, other projects have partnered with already established players in the crypto world or in conventional finance.

10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

Apart from the favourable tax environment for companies and the high degree of political and economic stability, Liechtenstein is an excellent place for entrepreneurs to settle. Liechtenstein as an EEA member has EU-compatible regulations and full freedom to provide services in all EEA countries. Due to the traditionally close neighbourly economic relations and the customs and currency treaty with Switzerland, Liechtenstein companies also benefit from privileged access to the Swiss market. Due to its size Liechtenstein offers flexibility and expediency when it comes to decision making, especially with governmental agencies and the FMA. It is also very innovative and pro-active, the establishment of the Regulatory Laboratory and the enactment of the Liechtenstein Blockchain Act being examples of this. Liechtenstein is in general a very business friendly environment with a liberal economic policy, which is for example reflected in its labor and corporate law.

11. Access to talent is often cited as a key issue for fintechs - are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force

now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

Liechtenstein operates a restrictive policy regarding residency but a less strict policy regarding working in the Principality. As a general rule Liechtenstein differentiates between EEA citizens, Swiss citizens and citizens of other countries. Quotas for residency are in place for EEA citizens (granted or lottery) and Swiss citizens (only granted) while for citizens of other countries residency only can be granted on a case by case basis. Swiss citizens require no permit or registration for working in Liechtenstein. EEA citizens who work in Liechtenstein must be registered with the authorities by their employer within ten days of commencing work. Citizens of other countries require a permit before starting work in Liechtenstein. This permit is issued for one year and will be approved by the Migration and Passport Office only if certain conditions are met.

12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

There is no direct influence of the fintech industry or its regulator on the immigration policy of Liechtenstein. However, if a given talent pool is depleted due to a number of industries competing for said talents, the aforementioned 'strict' immigration policy is flexible enough to allow the replenishment of the talent pool from any country in addition to Switzerland and the EEA.

13. What protections can a fintech use in your jurisdiction to protect its intellectual property?

Fintech companies in Liechtenstein can use inter alia the following to protect their intellectual property:

Copyrights: Copyright in Liechtenstein needs no registration. A work is protected, until 70 years after the death of the originator, by copyright from the moment of its creation, and does not have to be recorded on a medium.

Trademarks: In Liechtenstein trademarks have to be registered with the Office of Economic Affairs. The protection period for a trademark is ten years and can be extended for a further ten years for an unlimited number of times. Please note that Liechtenstein, in contrast to other states, does not provide for opposition proceedings regarding new trademarks. One requires a final judgment or arbitration award to cancel a registered Liechtenstein trademark. For the registration of a trademark with protection in all member states of the EU (Union Trademark) the trademark must be registered with the European Union Intellectual Property Office (EUIPO). International trademarks, registered with the World Intellectual Property Organization (WIPO) have the same effect as a national registration in Liechtenstein.

Patents: In Liechtenstein inventions can only be patented if they are new and not obvious and are capable of being commercially exploited. Due to the patent protection treaty between Liechtenstein and Switzerland, patent always applies to the entire protective territory of both countries and Liechtenstein patents are issued by the Swiss Federal Institute of Intellectual Property (IGE). Patented inventions may be exploited within a defined territory for a period of up to 20 years exclusively with the approval of the patent holder.

14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

Currently crypto currencies are not subject to any special legislation but are mostly classified as either 'e-money' or 'virtual currencies' by the regulator in Liechtenstein, depending on the design of the respective currency. In the Liechtenstein Electronic Money Act e-money is defined as 'electronically or magnetically stored monetary value as represented by a claim on the electronic money issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in the Payment Services Act, and which is accepted by a natural or legal person other than the electronic money issuer'. In the Liechtenstein Due Diligence Act virtual currency is defined as 'a digital representation of a value which has not been issued or guaranteed by any central bank or public authority and is not necessarily linked to a currency established by law and which does not have the legal status of a currency or money but is accepted by natural or legal persons as a means of exchange and which can be transmitted, stored and traded electronically'. For the commercial issuance of e-money in Liechtenstein a licence as an electronic money institution is required. As for virtual currencies, according to the FMA, neither the production nor the usage of virtual currencies as means of payment is subject to any licensing requirement. However, in specific cases (depending on the business model) licensing requirements or due diligence obligations may apply.

15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?

The Liechtenstein Blockchain Act classifies issuers of tokens (amounting to CHF 5 Mio and above within 12 months) as Trustworthy Technology (TT) service providers. TT service providers who are domiciled in Liechtenstein and wish to provide their services there must (with some exceptions) apply in writing for registration with the TT service provider register. The service may not be performed until the registration has been approved. The statutory minimum capital requirement by the Liechtenstein Blockchain Act for token issuers is CHF 50'000.00 for issues of up to CHF 5 million during a calendar year, CHF 100'000.00 for issues of more than CHF 5 million to CHF 25 million during a calendar year and CHF 250'000.00 for issues of more than CHF 25 million during a calendar year. In addition, token issuers must generally (there are some exceptions) publish 'basic information'. These provisions are following the obligation to publish a prospectus.

Also, every token issue must be notified to the FMA when the token is offered publicly for the

first time. This also applies to already registered TT service providers. Information on the issuer, the token, the TT system used, the time of issue, the issuing currency and the target markets must be provided.

Furthermore, the token issued may be subject to financial market legislation and therefore subject to licensing (by the FMA) on the basis of special legislation and may require publication of a prospectus (in terms of the Prospectus Regulation [EU] 2017/1129). Accordingly it is recommended to sort this out before issuing tokens in Liechtenstein.

Due to the entering into force of the Liechtenstein Blockchain Act on 1 January 2020 we do not foresee any substantial change in the indicated timeframe.

16. Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?

There are some live blockchain projects in Liechtenstein, especially in connection with the finance sector and cryptocurrencies/token economy. A Liechtenstein Fintech start up has been granted a license (subject to conditions) by the FMA to operate an MTF for digital assets and is therefore the first MiFiD II compliant digital asset trading platform in the EEA. The first ever bond on the Ethereum blockchain was issued in Liechtenstein, as well as one of the first security token offerings in Europe with regulator approval took place in Liechtenstein. The FMA also issued an e-money licence with conditions and requirements to a company funded via blockchain technology in 2019. Further, the FMA has approved a prospectus for a tokenised real estate investment product based on blockchain technology. On a lighter note, a collectibles game based on blockchain was launched in Liechtenstein in 2019 that aims to educate users on the blockchain technology whilst having fun learning about Liechtenstein at the same time.

17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

The University of Liechtenstein and Kimera Systems announced a partnership regarding an AI research project in 2019. Based on the generally positive attitude of the government and the FMA toward technical progress in Liechtenstein and its opportunities for the Liechtenstein financial centre, it cannot be assumed that future regulations will be restrictive. For example, the Deputy Head of Government and Minister of Economic Affairs officially opened a Digital Summit on the topic of artificial intelligence.

18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

InsurTech ONE, which sells liability and household insurance via online technology, and the

Prosperity Company, which sells retirement and risk insurance, are located in Liechtenstein and are very successful. Furthermore, Liechtenstein Life Assurance AG entered into cooperation with the German based InsurTech start up Penseo regarding its pension product "Value Rent Business". Due to the high insurance density in Liechtenstein, further projects are expected.

19. Are there any areas of fintech that are particularly strong in your jurisdiction?

At this point in time, projects based on blockchain and the cryptocurrencies/token economy are very popular in Liechtenstein (i.e. attempts to obtain licences [and a granted license subject to conditions] to trade digital assets in various ways/exchanges and issuance of tokenized financial instruments).

20. What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?

At this point in time it is more collaboration between financial institutions and fintechs in Liechtenstein (incubators, sponsoring of lecture series and summits on the topic, support of projects for fintech start ups). Also some financial institutes try to become leaders/pioneers in the developing Liechtenstein fintech market (for instance the only registered TT service provider is a Liechtenstein financial institution), while established global fintech companies aiming to gain influence in existing financial institutes in Liechtenstein.

Furthermore, in the past a financial institution acquired majority stakes in two Liechtenstein based fintech companies and established two fintech related subsidiaries, one for the promotion and financing of fintech and blockchain start-ups and one that offers institutional investors professional access to multi-exchange trading of digital tokens.

21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

The majority of Liechtenstein financial institutions are carrying out their own fintech/innovation programs in one form or another, while some of the financial institutions have stated that they are more cautious and currently have no active programs. A financial institution reported in its annual report that it plans to build a one-stop Blockchain Eco-System to further promote and develop the Blockchain economy in Liechtenstein and the EEA.

22. Are there any strong examples of disruption through fintech in your jurisdiction?

Given the optimistic attitude of the financial sector described above and its general support of digitization and change, there are currently no strong examples of disruption in Liechtenstein. This may be due to the general positive sentiment towards this new form of economy and the more institutional client base in Liechtenstein.