



## Press release

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### In the interest of stability

#### **The Liechtenstein Bankers Association invited to a talk on Liechtenstein's netting legislation**

Vaduz, 21.10.2015

Today, several experts met to discuss current regulatory projects in the area of netting legislation at the offices of LGT Bank AG in Vaduz. The meeting was attended by representatives of the ISDA, the working group on netting of the Swiss Bankers Association (SBA), the Liechtenstein government, the Financial Market Authority (FMA) of Liechtenstein and the Liechtenstein Bankers Association (LBA). The ISDA is interested in obtaining a legal opinion on Liechtenstein, which will be of importance to the future of the financial centre.

#### **Bank Recovery and Resolution Directive (BRRD)**

Liechtenstein is currently transposing the BRRD into national law. In this regard, the draft schedule provides that the provisions implementing the BRRD in Liechtenstein should enter into force on the 1<sup>st</sup> of January 2017. Based on the experience with other countries Dr. Peter Werner from ISDA explained, what needs to be considered when transposing the BRRD so as not to affect the netting safeguards. The stay period should not last longer than the 48 hours as prescribed by the directive. There must not be any doubt about that all secured financial instruments are exempted from the bail-in requirement and are therefore also repo and securities lending and not only derivatives. The powers of the resolution authority needs to be limited so that they can only transfer the complete derivatives portfolio to a bridge bank but by no means only parts of it. According to the officials, Liechtenstein will pay particular attention to these criteria as there are anyway no discrepancies contemplated.

#### **Legal Opinion**

The SBA has obtained a new legal opinion on Liechtenstein. According to Beat Gabathuler from the Zürcher Kantonalbank, a member of the working group on netting of the SBA, the ISDA-style opinion shows clearly that close-out netting with counterparties in Liechtenstein is possible. There are only uncertainties regarding physically settled commodity derivatives and it is not clear whether such contracts, that might not be nettable, can poison a portfolio of otherwise nettable contracts. The opinion therefore recommends to deal with such contracts under a separate Master Agreement. Furthermore, the report suggests to stipulate arbitration clauses as Liechtenstein does not recognise foreign judgements with the exception of such from Austria and Switzerland.



### Revision of the netting laws

To simplify the interpretation of the netting provisions in Liechtenstein and thus further increase legal certainty, Liechtenstein is currently incorporating applicable judicature, respective comments and clarifications into law. Specifically, the following amendments are planned:

- Determining which financial contracts are falling under the term of the "Contracts for financial services" through a reference to the Annex II of Regulation (EU) No 575/2013 (CRR) and explicitly mentioning credit derivatives and all other derivatives, that are traded on a regulated market or on a multilateral trading facility as well as all contracts that are concluded under a master agreement and spot transactions;
- Deletion of the provision that the value of the contracts must be determined on the basis of estimates, market values or exchange prices in order to leave this up to the contractual arrangements;
- Incorporation of the applicable judicature, that already protects contractual termination clauses;
- Clarification in the Banking Act, that the gambling and bet provision in § 1271 of the General Civil Code does not apply to banking transactions, which is consistent with the applicable judicature;
- Clarification in the Banking Act, that Article 25 of the Directive 2001/24/EU, which protects the governing law agreed in the master agreement, shall also apply in relation to third countries;
- Amendment of the Liechtenstein Law Securing Order ("Rechtssicherungs-Ordnung") to protect financial collateral from being challenged in case of an indeptness of the debtor at the time the pledge has taken place; and
- Clarification in the Liechtenstein Property Law that the creditor in the case of non-satisfaction is allowed to discretionary utilize the pledge without authorisation by court, which was according to the legislative materials already the intention of the legislator when adapting the current law.

The ISDA is supporting Liechtenstein with its netting legislation and expressed its willingness to consider commissioning a legal opinion on Liechtenstein as soon as the local Parliament adopts the mentioned revisions of the netting provisions.

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*from left to right: Dr. Peter Werner (ISDA), Patrik Lengwiler (LGT Bank AG), Beat Gabathuler (ZKB), Johann Wucherer (LBA), Rafik Yezza (LBA), Dr. Judith Sild (FMA), Patrick Brüllmann (VP Bank AG), Dr. Matthias Wagner (FMA), Dr. Thomas Dünser (Ministry for General Government Affairs and Finance)*