

Lichtenstein Trusts

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1. Significance and the Concept of Foundation

Liechtenstein is one of the few states which on the one hand permits private foundations and on the other hand offers considerable tax advantages. Foundations may be established and maintained without any kind of official supervision. For these reasons the Liechtenstein foundation is one of the most popular corporate entities among foreign investors.

What is a foundation? The law dated 20 January 1926 (Persons and Companies Law / Personen-und Gesellschaftsrecht "PGR") provides: "For a foundation to be formed by natural persons or legal entities or firms it is necessary for assets to be endowed (foundation property) for a certain specific purpose."

The foundation property is separated from the founder's/founders' assets and is given independent legal personality. With the foundation as owner of the endowed assets, a certain purpose defined by the founder in the articles is then pursued.

2. Various Forms of the Foundation

The founder is free to formulate the objects of a foundation. The law only provides that the objects shall be specific, possible and reasonable, and not unlawful or immoral.

In practice, the following forms of foundations are often used.

- Family foundations: Here the foundation property is exclusively devoted to the purpose of defraying expenses for upbringing and education, outfitting or support of the relatives of certain families. In a so-called "mixed family foundation" there are other additional objects outside the family.
- Charitable foundations: These provide for support of artistic, humanitarian and charitable institutions, as well as the promotion of research and educational projects.
- Company foundations: The purpose here is to hold interests in companies as well as to bestow the income there from upon the persons designated by the founder.
- Staff Welfare Foundations: If employers and/or employees make contributions to the staff welfare, and if these amounts serve social purposes for the benefit of employees, this may be done in form of a staff welfare foundation.
- The public foundation and the ecclesiastical foundation are not discussed here.

3. The Formation of the Foundation

In practice foundations are generally established in trust which preserves the anonymity of the principal's name.

The foundation is usually established through a so-called foundation deed in which one or several founders declare that a certain property shall be endowed and a foundation established. The signature(s) of the founder(s) is (are) to be certified. In addition, it is possible to establish a foundation by testamentary disposition or by deed of inheritance.

The foundation deed (articles or foundation letter) may be seen as the "constitution" of the foundation, which by law must at least provide the name, address and purpose of the foundation, the amount or nature of the foundation capital, the initial members of the so-called foundation board (cf. below), the procedure of their (re-)election as well as provisions for the distribution of the foundation's assets in the event the foundation is dissolved.

Additional optional provisions may be included either in the foundation deed itself or in by-laws or regulations.

Depending on the purpose of the foundation it will acquire a legal personality upon registration in the public (foundation) register or upon deposition of the foundation deed with the register authority (so-called "deposited foundations").

Deposited deeds are not accessible to the public. No extract from the register may be requested, but only an official confirmation which bears the date of the foundation's establishment and the data concerning the foundation board. Such official confirmation of the registrar is issued only to the foundation board or the legal representative of the foundation.

4. Foundation Capital and Foundation Property

The assets mentioned in the foundation deed and endowed or made available by the founders constitute the foundation capital. This must amount to at least CHF 30,000.00.

The foundation property, however, constitutes all assets of the foundation existing as separate foundation property. Such property may be endowments from third parties or assets obtained by the foundation itself.

5. Liability for the Foundation's Debts

Liability for the debts of the foundation is limited to the foundation property. Subject to contrary provisions, income which a person receives from a foundation without valuable consideration, may be attached by injunction, levy of execution and bankruptcy proceedings only when the said income is not required for the defrayal of the essential living expenses of the beneficiaries, his spouse and his children without means.

In the case of family foundations, the founder may provide that the creditors of specifically designated third parties (beneficiaries) shall not withdraw from these their beneficial interest acquired without valuable consideration by way of injunction, levy of execution and bankruptcy proceedings.

6. The Organization of the Foundation

The foundation acquires legal capacity only after it has appointed the necessary organs. The law provides that the organisation of the foundation has to be determined in the articles.

The articles provide for the following participants (bodies):

- the foundation board
- the founder
- the beneficiaries
- the legal representative
- the audit authority
- the protectors/advisory committee

The **foundation board** is the supreme body of the foundation. It is responsible for the management and representation of the foundation. The foundation board is appointed by the founder in the articles. The foundation board is usually granted the right to appoint additional members to the board as well as to regulate their succession. The members may be natural or legal persons, resident in or outside of Liechtenstein. However, at least one member of the foundation board must be a Liechtenstein resident and either possess a professional license to act as a lawyer, legal agent, trustee or auditor or hold a government-recognised business qualification. The majority of the foundation board may consist of foreign members. The **founder** may retain the control over the application of the foundation's property in accordance with the endowment by reserving such control. He may, however, prefer to be granted individual rights within the statutes, for instance the

right to appoint or remove members of the foundation board or the right to revoke the foundation.

A **beneficiary** is a person who according to the foundation deed or the by-laws (cf. below) shall receive any present or future benefits from the foundation, whether as part of the income from the foundation's assets or the assets themselves or both. The beneficial interest may be qualified, limited, tied to a condition or dedicated for impersonal purposes. It may be revoked if the beneficial interest was granted without consideration. A revocation may be asserted on grounds of insufficient trustworthiness of the beneficiary as well as on grounds of deterioration of assets. The beneficiaries are usually appointed in the by-laws. The by-laws, as opposed to the articles, need not be registered in the public register nor deposited. Therefore, they are not accessible to third parties. Once the by-laws are issued, they are as legally binding as the articles.

The articles or by-laws may provide that if certain persons cease to be beneficiaries, then other persons are appointed as their successors. The latter are called remaindermen. Generally, they have the same rights and obligations as the beneficiaries. For instance, they have a right to request information from the board of directors and are entitled to inspect all books of account where their own rights are concerned.

The **legal representative** as provided for by law is a (natural or legal) person, resident or domiciled in Liechtenstein, appointed by the foundation to accept service. The legal representative is empowered to receive declarations and communications of all kinds from the Liechtenstein authorities.

The **audit authority** is only mandatory if the foundation pursues commercial activities. Commercial activities are independent, ongoing activities, carried on for profit where the type and size of the company render necessary the facilities of a commercial business and orderly accounting. As a consequence, registration in the public register is necessary. The audit authority is either created in the articles or appointed by the foundation board.

Other optional bodies of a foundation are the **protectors** and the **advisory committee**. Protectors can have the right to appoint beneficiaries and determine the beneficial interest. The advisory committee can execute a special control over the foundation board on behalf of the founder; it may, as well, take on an advisory function concerning the members of the foundation board.

7. The Supervision of Foundations

Foundations under obligation to register are subject to supervision by the government, which shall be notified by the register authority. Deposited foundations are exempt from the government notification requirement. Nevertheless, their statutes may also provide for governmental supervision. The government supervises the administration and the application of the foundation's assets according to the foundation's purposes and any person who has an interest in the foundation may lodge a complaint and thus summon the government to its supervisory task.

If the organisation of a foundation is insufficiently regulated or a change of the organisation is urgently necessary in order to preserve the assets or safeguard the purpose, and if the articles do not provide otherwise, the government may also change the foundation's organisation. The object of a foundation may be amended by the government only if the original purpose has acquired a completely different meaning and, as a result, is estranged from the original intentions of the founder(s).

8. Amendment of the Articles

The procedure of amending the articles has to be determined within the articles. In the event the articles do not contain any such provisions or amendment is even excluded, the following requirements for possible amendment must all be fulfilled:

- the consent of all participants
- existence of a good cause
- diligent examination of all circumstances
- permission of the register authority.

9. Cancellation and Termination of the Foundation

The cancellation of the foundation ensues either by bankruptcy, by operation of law or by conversion. In case of insolvency or over-indebtedness the foundation will be wound up by bankruptcy proceedings. The foundation will be cancelled by operation of the law if:

- the foundation purpose cannot be achieved, particularly when the foundation purpose can no longer be realised;
- the foundation can no longer fulfil its objects owing to lack of adequate assets;
- the duration specified in the articles has expired;
- the objects being unlawful, immoral, or constituting a danger to the state, or on grounds of activity constituting danger to the state, or on grounds of a central defect in the foundation's articles;
- the foundation deed does not determine otherwise, by the consent of the foundation board, all beneficiaries and possibly all the entitled remaindermen to an application called dissolution, and if, pursuant to the foundation deed, the beneficial interest has been acquired without valuable consideration; also with the assent of the founder personally or the founder's direct universal successors in title, which assent may, for important reasons, be granted by the register office.

Once the implementation of the liquidation has been resolved, the foundation board appoints a liquidator. On application of the liquidator the liquidation will be published in the newspaper. After a fixed period of six months, within which the creditors may file their claims, the foundation will be deleted.

A **conversion** (into an establishment or a trust enterprise) may only be performed if expressly provided for in the articles and if the other prerequisites are provided. The necessary prerequisites are the ones which are required to constitute an establishment or a trust enterprise, e.g. the setting up of the articles and the appointment of the organs.

The foundation may be converted by the foundation board without liquidation.

10. Legal Sources

The provisions governing the foundation are found in the Persons and Company Law of 20 January 1926 (PGR):

- the foundation is mainly regulated in Articles 552 to 570 PGR;
- the provisions regarding the trust enterprise with legal personality are to be applied subsidiarily (Article 932a, §§1-170 PGR);
- the general provisions on legal entities are also applied supplementarily (Art. 106 - 245 PGR);
- finally, for the evaluation of the legal relationship between a foundation and third parties, the provisions of the General Commercial Code (Allgemeines Handelsgesetzbuch - AHGB) as well as those of the General Civil Code (Allgemeines Bürgerliches Gesetzbuch - ABGB) are applied subsidiarily.