

6. LIECHTENSTEIN

6.1. Introduction

Foundations play a major role in the financial centre Liechtenstein. Foundations in Liechtenstein have also entered into the public consciousness again recently as a result of the tax evasion cases discovered in Germany at the beginning of 2008, as Liechtenstein foundations also played a key role in many of these cases. This survey is intended to provide an overview of the requirements under civil law and the tax treatment of foundations in Liechtenstein.

6.2. Civil Law Framework

The basis according to civil law for foundations in Liechtenstein is set out in the Persons and Companies Act (Personen- und Gesellschaftsrecht, PGR). A foundation within the meaning of the Persons and Companies Act is a special-purpose fund raised to the status of legal person and which has its own legal personality. The fund is then no longer the property of the donor, but rather becomes the capital of the foundation which is called a collective person (Verbandsperson) in Liechtenstein. Just as in Austria, in contrast to corporations or associations, the foundation has no owners or members. In creating the foundation, the endowment is dedicated to a special purpose. With respect to this purpose, a general distinction is made in Liechtenstein between church-related foundations, charitable and family foundations. Mixed forms are also possible; however this report only deals with the family foundation. The purpose of the foundation is the realization of the founder's will set out in the foundation deed and the foundation statutes. A family foundation is an entity in which the foundation assets permanently serve the purpose of covering the costs of raising, educating, outfitting or supporting one or more members of one or several specified families, or similar purposes. The foundation's beneficiaries are the persons who benefit from the realization of the foundation's purpose. The founder himself may also be a beneficiary.

The foundation deed (Stiftungsurkunde) must be drawn up as a written document and must bear the founder's signature certified by a notary. The foundation deed regulates the internal organization of the foundation. The following points must be provided for in the foundation deed:

- Name of the foundation
- Domicile the foundation
- Purpose or object of the foundation
- Amount of the foundation capital
- Members of the foundation's board of trustees

- Manner in which board of trustee members are to be appointed
- Use of assets in the event the foundation is dissolved

The foundation deed may also contain further regulations on the foundation's organization.

The foundation only has legal capacity through its executive bodies. The board of trustees (Stiftungsrat) is the executive body of the foundation and represents the foundation in external affairs and is responsible for administering the internal matters. The exact extent of the powers result from the statutory provisions and regulations set out in the foundation deed, the statutes and the by-laws. Foundations in which the majority of the executive or representative bodies' members are non-Liechtenstein nationals must appoint a representative in Liechtenstein. This representative must be a Liechtenstein national permanently domiciled in Liechtenstein; moreover, he or she must be authorized to represent the foundation without the assistance of another person in dealing with the public authorities. This person is to be entered in the Public Register. For foundations that pursue a trade that is conducted in a commercial manner, it is mandatory to appoint an auditing body (Revisionsstelle). All other foundations may, but do not have to appoint an auditing body. The auditing body is responsible for auditing the foundation's balance sheets, inventory, profit and loss statement and other accounting with regard to compliance, reliability and accuracy and in order to ensure that they accurately represent the situation and business results of the foundation. In addition, foundations can appoint additional bodies and correspondingly define their rights. For example, a so-called Kollator, who is authorised to appoint beneficiaries, may be appointed. It is also customary to appoint so-called advisory board members (Beiräte) to exercise control over the trustees or who are authorised with certain powers for investing foundation assets. Generally, the foundation bodies are liable for damages caused to the foundation by them as a result of intent or negligence.

The minimum amount of capital for a foundation is EUR 30,000 (or CHF 30,000 or USD 30,000). The assets must be immediately transferred to the foundation when the foundation is established on the basis of the details set out in the foundation deed. As a general rule, the foundation is not established until it is entered in the Public Register. There is no obligation of entering a family foundation in the Public Register. However, the foundation documents of family foundations must be deposited with the Public Register.

In practice, as a result of the rule according to which family foundations only have to deposit their documents, family foundations in Liechtenstein benefit from extensive anonymity.

Foundations are not required to keep books nor are they required to publish balance sheets as long as they do not pursue a trade in a commercial manner.

The foundation may be wound up by legal rescission, dissolution of the foundation in accordance with its statutes or by means of changing its legal form.

Current efforts are underway to extensively reform foundation law in Liechtenstein. While existing draft laws provide for extensive changes, the principle of anonymity, which was regularly criticised in the past, should not be substantially modified.

6.3. Tax Treatment of Foundations

Foundations themselves enjoy very extensive tax advantages regarding foundation endowments, the regular taxation of foundation income, the distribution of income to the beneficiaries or in the case that the foundation is wound up.

Tax treatment of foundation endowment

A foundation fee is charged upon creation of a foundation. For foundations that pursue a trade in a commercial manner, this fee amounts to 1% of the capital. An application can be filed for a capital amount of more than CHF 5 m to have the fee reduced to 0.5%. For a capital amount of more than CHF 10 m, the fee can be reduced to 0.3%. For other foundations the fee amounts to 2‰ of the capital. The minimum amount is set at CHF 250.00; the maximum amount is CHF 250,000.

Regular taxation of foundations in Liechtenstein

▪ Capital tax

Foundations in Liechtenstein are subject to capital tax on the declared capital and the reserves, regardless of the foundation purpose. This tax is very moderate; the annual tax burden for the following amounts of assets can be seen in the table below.

Up to CHF 2 m	1 ‰
From CHF 2 m to 10 m	$\frac{3}{4}$ ‰
More than CHF 10 m	$\frac{1}{2}$ ‰

For the sake of completeness, mention is made that the annual minimum burden amounts to CHF 1,000.

▪ Earnings tax

Earnings tax is levied on the annual net earnings; these are all profits including capital gains and liquidation profits from which business-related expenses are deducted. The tax amounts