

The Liechtenstein common-benefit foundation:

a mainstay of the Principality's
financial centre strategy



Philanthropy and sustainability

Common-benefit (charitable or non-profit) foundations are a mainstay of Liechtenstein's financial centre strategy.



People are increasingly adopting sustainability as a basis for their actions and investments, and the number of charitable foundations and organisations is growing all around the world – nowhere less than in the Principality of Liechtenstein. In 2008, Liechtenstein completely revised its foundation law, an integral component of the Principality's financial centre strategy. Since then, many things have changed.

There are now more than twelve hundred common-benefit foundations in Liechtenstein, all subject to government supervision. A liberal legal framework embedded within clear corporate governance structures gives plenty of scope when it comes to setting up a foundation. Because the Principality belongs to the European Economic Area (EEA), Liechtenstein foundations can take advantage of the free movement of people and capital within the internal EU market.

Five years ago the Vereinigung liechtensteinischer gemeinnütziger Stiftungen (Association of Liechtenstein Charitable Foundations) was established. It's time to take stock. This brochure is designed to give a comprehensive overview of a sector with huge future potential. It describes how a common-benefit foundation functions, and looks into the organisational requirements and the tax and legal framework. People with a practical interest in Liechtenstein foundations will find plenty of guidance and food for thought.

I would particularly like to thank the people we interviewed for this publication, whose input has been invaluable in creating this brochure. I wish you stimulating reading.

Best regards

Claudio Tettamanti
Partner, PricewaterhouseCoopers

Importance of common-benefit foundations for Liechtenstein

The Liechtenstein foundation market in figures

Under Liechtenstein law, common-benefit (non-profit or public-benefit) and private-benefit foundations that conduct commercial activities must be entered in the commercial register. Other private-benefit foundations are not subject to this requirement, but may voluntarily seek entry in the commercial register.

Two opposing developments can be observed in the Liechtenstein foundation market. On the one hand, the number of foundations, both lodged and registered, has been in steady and sometimes sharp decline in the Principality for years. On the other hand, the number of common-benefit foundations has been growing steadily at around 3 % a year. There is a clear trend away from traditional private-benefit foundations to philanthropy. For this reason we will be focusing almost exclusively on common-benefit foundations in this brochure.

	31 Dec 13	31 Dec 12	31 Dec 11
Lodged foundations	24,109	28,815	32,532
Registered foundations	1,780	1,803	1,810
• of which newly established over the past year	104	110	114
• of which common-benefit foundations	1,199	1,169	1,137
Total legal entities	46,648	53,206	58,600

(Source: website of the Foundation Supervisory Authority (STIFA), www.stifa.li)

Association of Liechtenstein Charitable Foundations (Vereinigung liechtensteinischer gemeinnütziger Stiftungen, VLGS)

The VLGS was established in 2010 as an advocacy group for common-benefit (non-profit or public-benefit) foundations in Liechtenstein. Its aim is to serve as a partner to political authorities and other organisations in Liechtenstein and abroad, create a network of foundations, and take an active role in developing foundation management standards. In what was a positive move for the Liechtenstein financial centre, in 2013 the VLGS also became a member of Donors and Foundations Networks Europe (DAFNE).

VLGS	2014	2013	2012
No. of members	40	22	20

Last year the VLGS conducted its first survey of the total amounts distributed by foundations domiciled in Liechtenstein. This type of evaluation, while not comprehensive, does give an idea of the importance of common-benefit foundations for Liechtenstein, the region and the world beyond.

The 90 foundations that took part in the survey (both VLGS members and non-members) reported the following total expenditure:

Total assets distributed	2012	2011
Amount in CHF m	110	107
No. of foundations	82	71

The study also revealed that only 9% of these assets were distributed within the Liechtenstein/Rhine Valley area, with 91 % distributed outside this region.

So far there are no figures available for the total funds managed in common-benefit foundations.

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How does a Liechtenstein foundation work?

Fundamentals of the Liechtenstein common-benefit foundation

The law governing foundations is part of the Liechtenstein Persons and Companies Act (Personen- und Gesellschaftsrecht, PGR), the full amendment of which entered into force on 1 April 2009. article 552 of the new PGR is also known as the Foundation Law. In art. 552 §1 PGR, a foundation is defined as follows: "...a legally and economically independent special-purpose fund which is formed as a legal entity (juristic person) through the unilateral declaration of will of the founder. The founder allocates the specifically designated foundation assets, stipulates the purpose of the foundation, entirely non-self-serving and specifically designated, and also stipulates the beneficiaries."

The foundation may be established to serve either a "common-benefit" or "private-benefit" purpose. For this reason a basic distinction is made between "common-benefit" and "private-benefit" foundations.

A foundation can be formed *inter vivos* by means of a declaration of establishment, which must be in written form and bear the authenticated signatures of the founders. A foundation can also be formed by way of last will and testament or contract of inheritance.

The purpose of the foundation is stipulated in the declaration of establishment. A foundation is deemed to be common-benefit if, according to the declaration of establishment, it is primarily intended to serve common-benefit (public-benefit) purposes, and is not a family foundation. In civil law terms, purposes recognised as non-profit making (common-benefit) or charitable are those defined in art. 107 para 4a PGR. The prerequisite is always that the foundation serves the common good. In particular, there is deemed to be a benefit to the general public "if the activity serves the common good in a charitable, religious, humanitarian, scientific, cultural, moral, sporting or ecological sense, even if only a specific category of persons benefits from the activity."

There is also the option of setting up a mixed common-benefit foundation. To be deemed to be a common-benefit foundation, a foundation of this sort must be entirely or predominantly (at least 51 %) intended to serve common-benefit purposes. Predominance is assessed according to the relationship between activities intended to serve private purposes and activities intended to serve a common purpose at a given time. In cases of uncertainty, under the terms of art. 552 §2 para 3 PGR the foundation must be treated as a common-benefit foundation. However, foundations of this sort are not exempt from tax in the Principality.

A common-benefit foundation is only permitted to conduct business run along commercial lines if this directly serves the achievement of its common-benefit purpose or is permitted on a special statutory basis.

The law (art. 552 §16 PGR) also lays down minimum requirements governing the content of the foundation deed (articles). Common-benefit foundations must be entered in the commercial register, and only acquire a legal personality once this has been done. The minimum capital of the foundation must be CHF 30,000 or EUR 30,000 or USD 30,000.

Structure of a Liechtenstein common-benefit foundation

According to art. 552 §3 PGR, the participants in a foundation are the founder, the entitled beneficiaries, the prospective beneficiaries, the discretionary beneficiaries, the ultimate beneficiaries, the executive bodies of the foundation, and the members of these executive bodies. The foundation council, which must have at least two members, is one executive body of the foundation. The foundation council manages the business of the foundation and represents it. Legal entities can be a member of the foundation council. The requirement that the foundation council have at least two members was introduced as part of the amendment of the law with the aim of strengthening the checks and balances within foundations.

Unless otherwise provided in the foundation deed, members of the foundation council are appointed for a term of three years and can be reappointed. They may serve with or without remuneration. If members of the foundation council serve without remuneration, liability for minor negligence may be excluded in the declaration of establishment.

The foundation council is responsible for the achievement of the foundation's purpose. This involves managing the foundation assets in compliance with the founder's intention, in conformity with the purpose of the foundation, and in accordance with the principles of good management. In respect of the management and appropriation of the foundation assets and taking into consideration the principles of orderly bookkeeping, the foundation council must maintain a schedule of assets and appropriate records of the financial circumstances of the foundation and keep documentary evidence presenting a comprehensible account of the course of business and movement of the foundation assets.

All common-benefit foundations must also have a qualified independent audit authority pursuant to art. 552 §27 PGR as an executive body. The audit authority is appointed at the request of the Princely Court of Justice. However, the Foundation Supervisory Authority may on request dispense with the obligation to appoint an audit authority if the foundation manages only limited assets or if waiving the requirement appears expedient for other reasons. The government has laid down the precise requirements for this special dispensation in the Foundation Law Ordinance.

The following graphic shows in simplified form how a foundation is set up:

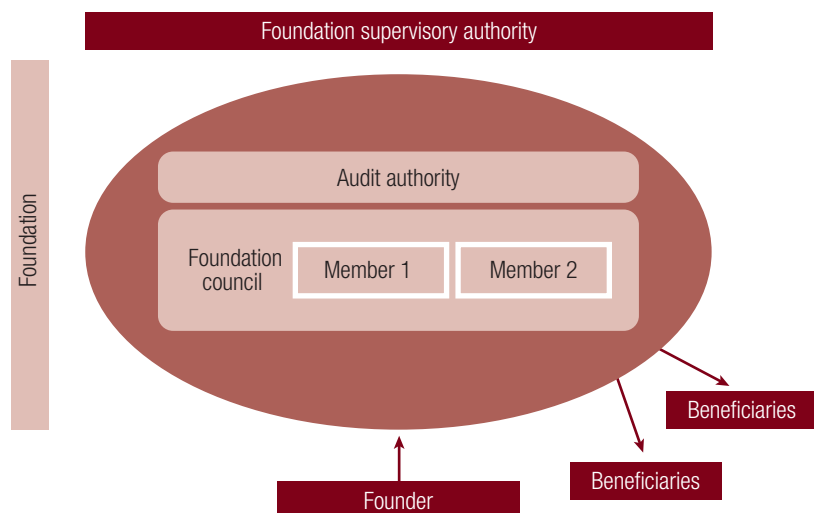
Supervision and control

Under the terms of the law, common-benefit foundations are subject to the supervision of the Foundation Supervisory Authority (STIFA). The responsibility of STIFA is to ensure that the assets of foundations are managed and distributed in accordance with their purposes. The government has set down more detailed provisions governing the activities of STIFA and the fees it levies in the Foundation Law Ordinance (StRV/FLO) of 24 March 2009. STIFA's supervisory role includes inspecting the audit report submitted to it each year by the audit authority in its capacity as an executive body of the foundation.

This means that the main role of the audit authority is to assess on an annual basis whether the foundation assets have been managed and used in accordance with the purposes of the foundation. Every year it must submit a report on the findings of this audit to STIFA. STIFA performs its inspection remit on the basis of these audit reports, and may require a foundation to provide additional information. It can also inspect the books and documents of a foundation via the audit authority and obtain information from other administrative authorities and the courts. Under the terms of art. 552 §29 para 4 PGR, STIFA may also apply to the judge for an order for further measures, for example the control and dismissal of executive bodies, special audits, or cancellation of resolutions made by a foundation's executive bodies.

Foundations that have been exempted from the obligation to appoint an audit authority are supervised directly by STIFA. In these cases it is the tax administration that assesses whether the assets have been appropriated in accordance with the foundation's purpose.

Common-benefit foundations are not subject to direct supervision in relation to money laundering or the financing of terrorism, and thus do not have to meet the obligations they would have to meet if they were subject to the Due Diligence Act (SPG/DDA) directly. However, STIFA does call on common-benefit foundations to base their conduct on the findings of the Financial Action Task Force (FATF) elaborated in a fact sheet on the dangers of terrorist financing, and to report suspicious circumstances directly to the Financial Intelligence Unit (FIU) in accordance with art. 17 of the Due Diligence Act (DDA/SPG).



“Individual solutions, expertise and stability”

Why Liechtenstein? Advantages of setting up a foundation in Liechtenstein

PwC had the opportunity to speak at length with Hans Brunhart, President of the Board of the Association of Liechtenstein Charitable Foundations (e.V.). Here are some extracts from the interview on important questions such as: Where do you see the benefits and peculiarities of Liechtenstein foundations? Where are Liechtenstein foundations positioned in an international context? How do you see things developing in future?



Hans Brunhart,
President of the Board
of VLGS

“Liberal legal framework, and building specialist expertise”

PwC: Hans Brunhart, what makes Liechtenstein such an attractive jurisdiction for foundations?

Brunhart: Basically the same considerations apply to foundations as to any other area of the financial industry. Since foundations revolve around financial assets, first of all you need to be able to provide a stable political and economic framework, and the expertise to ensure these assets are managed well. For many years Liechtenstein has been a country where foundations, both common- and private-benefit, have enjoyed high status.

You also need a good, liberal legal framework. This is one of the great advantages of Liechtenstein foundation law. This liberal framework gives founders a great deal of scope when it comes to setting up a foundation. It also means that the options for donating and distributing funds are not restricted to the country granting tax exemption.

Another factor is the work done for many years on foundation law by the University of Liechtenstein. There's a special chair devoted to this subject, and every year they hold a conference on foundation law, taking a systematic look at the latest trends and developments in this area.

All these factors help build trust among foundations and the people who found them and reassure them that they've chosen the right location. Foundations also need a network of different partners – something we're convinced is easier to provide in a small country like ours.

PwC: Liechtenstein has defined the promotion of common-benefit foundations as one of the mainstays of its new financial centre strategy. How are you experiencing this?

Brunhart: Our association, the VLGS, is closely involved in implementing this strategy. Our country – and the bankers' association – has defined philanthropy and sustainability as a pillar of our financial centre strategy. It might be a fairly new idea, but I firmly believe that philanthropy and sustainability go hand in hand. Both these things have positive connotations all over the world.

I also believe that philanthropy will play a very welcome role in the future in terms of providing employment, and that it will make a healthy contribution to the value created by the financial industry.

PwC: What role do the banks play here?

Brunhart: For me any bank that fails to at least raise the subject of philanthropy with a wealthy client and point out ways of implementing philanthropic goals on an institutional level is not giving full advice.

I realise not everyone shares this view yet, but I think that's a shame. Of course the fact that client relationship managers have to work under such pressure doesn't make this any easier.

“Explicitly include common-benefit foundations in double taxation agreements”

“There will have to be greater transparency”

PwC: What developments are you seeing at the VLGS?

Brunhart: We’re seeing good growth in our membership. We’re a partner in the University of Liechtenstein’s conference on foundation law. And we’ve also co-initiated a number of other relatively large projects, for example a project related to the recognition of foundations in private law.

For us communication is very important – particularly in Germany, the largest market that shares our language.

Common-benefit foundations should also be explicitly included in double taxation agreements, as was the case, for example, for the agreement with the UK. The principle of free movement of capital enshrined in European law requires that no obstacles be placed in the way of common-benefit foundations – particularly important in the light of the automatic exchange of tax information. This certainly requires the compatibility of the concept of common benefit and functioning supervisory bodies. But Liechtenstein has clearly defined these terms in its foundation and tax legislation, and has set up a modern foundation supervisory authority.

PwC: Where will the path lead? How do you see things developing in the future?

Brunhart: I expect the whole scene to become even more dynamic. The biggest change is likely to affect asset management. Themes such as impact investing will become more important.

That’s one side of the equation. On the other side is the prospect of tighter regulation in the next few years. This will mainly affect foundation governance, in other words the way foundations are managed and the responsibilities of a foundation’s executive bodies.

There’s also going to have to be greater transparency. I believe that sooner or later, all countries are going to have foundation registers. Given the financial situation in which some countries find themselves, tax exemption will have to be tied to transparency.

Other key factors will include demographic change and the growing individualism of our society.

PwC: How do you see foundations in Liechtenstein in 2020?

Brunhart: At the symposium we held to mark five years of the new foundation law we realised that there’s currently no need for major changes to the law. On the other hand, perceptions abroad are still coloured by certain reservations that have no grounding in the facts.

The current solid foundation will enable the partners involved in philanthropy – the authorities, the university, the banks, asset managers, fiduciaries and interest groups – to develop Liechtenstein’s expertise in this field. The goal has to be to make Liechtenstein a really attractive place for founders seeking the scope for an individual solution, expertise and stability. These are certainly the three most important needs for anyone establishing a foundation. I believe we’ll be even better placed to satisfy these needs in 2020.

PwC: Hans Brunhart, many thanks for a fascinating discussion.

Modern philanthropy

A growing number of donors and benefactors are seeking new modes of philanthropy alongside traditional forms of donation and endowment:

- Venture philanthropy (VP)
- Sustainable and responsible investment (SRI)
- Impact investing (investing with a positive capital impact)
- Programme and mission-related investments for foundations (mission investing)

Tax treatment of foundations in Liechtenstein

Material requirements

Under the terms of the law, common-benefit foundations must pursue an exclusively common-benefit (non-profit) purpose. art. 107 para 4a of the Persons and Companies Act (PGR) defines non-profit making (common-benefit) or charitable purposes as activities that serve the common good in a charitable, religious, humanitarian, scientific, cultural, moral, sporting or ecological sense. Not only must the common-benefit purpose be pursued exclusively, but the articles must specify that it be pursued irrevocably. The foundation is also required to actually operate in accordance with its stated purpose. It is therefore not sufficient for the foundation to pursue asset management as its actual activity and make only minor contributions to common-benefit purposes. This means the costs of asset management and administration must also be within reasonable limits. In the event of dissolution, the assets must be assigned exclusively to the foundation's common-benefit purpose. Further, a common-benefit foundation may not pursue profit-making purposes. If a common-benefit foundation nevertheless conducts commercial business, the net profit from this business will be subject to regular taxation if the related income exceeds CHF 300,000 per year.

In art. 4, paras 2 and 3 of the Tax Act (SteG), the Liechtenstein legislature has exempted common-benefit foundations from direct taxes: corporate income tax, tax on gains from the transfer of property, and the formation tax. This differs from the tax treatment of private-benefit foundations, which we will not go into in any more detail here. Certain material and formal requirements must be met for the tax exemption of common-benefit foundations to be legally recognised.

The following explanations are based to a large extent on a fact sheet issued by the Principality of Liechtenstein's tax administration in November 2013 relating to the requirements for the exemption of common-benefit foundations and other non-profit legal entities from direct tax.

Formal requirements

Common-benefit foundations can be exempted from tax liability subject to the tax administration's approval of their written application. If the tax exemption is valid from the moment the foundation is established, the foundation is not subject to the minimum corporate income tax. The tax administration will also refund the formation tax paid on the establishment of the foundation.

Inspection of common-benefit foundations
Common-benefit foundations that have been established in accordance with the regulations and have had their application for tax exemption duly granted are subject to an annual inspection requirement. This requirement differs depending on whether the foundation has an audit authority or not. In the case of common-benefit foundations with an audit authority, as part of its annual audit the audit authority must check whether the assets have been appropriated in compliance with the foundation's purpose. By contrast, the appropriation of assets at a common-benefit foundation without an audit authority is inspected directly by the tax administration. In both cases the relevant report or accounting records must be submitted within nine months of the end of the fiscal year. If the inspection reveals that the assets were not used for common-benefit purposes, tax exemption will not be granted and/or any tax exemption previously granted will be revoked.

Value-added tax (VAT)

Under the terms of art. 10 para 2c of the VAT Act (MWSTG), common-benefit foundations are exempt from VAT if they generate revenues of less than CHF 150,000 in Liechtenstein and Switzerland. VAT-exempt foundations can also voluntarily waive this exemption and opt to be taxed. Revenues are measured as agreed considerations without the tax. The following section contains some

examples of how Liechtenstein common-benefit foundations are affected by tax law in Germany, Austria and Switzerland.

Common-benefit foundations in Liechtenstein: views from abroad

We asked experts at PwC in Germany, Austria and Switzerland to comment on common-benefit foundations in Liechtenstein from their country's point of view:

	Germany	Austria	Switzerland
	<p><i>“When you set up a foundation it’s essential to avoid incurring gift tax.”</i></p> <p>Dr Kay Alexander Schulz, PwC Germany</p>	<p><i>“A reform of foundation law in Austria in favour of non-profit entities would make Liechtenstein common-benefit foundations more attractive.”</i></p> <p>Erik Malle, PwC Austria</p>	<p><i>“A reform of foundation law in Austria in favour of non-profit entities would make Liechtenstein common-benefit foundations more attractive.”</i></p> <p>Dr Marcel Widrig, PwC Switzerland</p>
<p><i>Is it possible for benefactors in your country to establish a common-benefit foundation in Liechtenstein?</i></p>	<p>While there are unlikely to be any civil-law obstacles to establishing a Liechtenstein foundation, if you want to avoid excessive taxation – in no way compatible with the purposes of the foundation – there are various aspects of tax law to be taken into consideration when setting up the foundation.</p>	<p>Basically an Austrian benefactor can set up a Liechtenstein foundation. But it’s essential to take account of the strict rules governing common-benefit or non-profit status under Austrian tax law. Under these rules a foundation must pursue immediate and exclusive common-benefit purposes, not just in terms of the declaration of establishment, but in the way the foundation is actually managed. Not only this, but the foundation may not seek to make a profit; any profit-making purpose must be excluded in the declaration of establishment.</p>	<p>Basically a Swiss benefactor can set up a Liechtenstein foundation. But the degree to which contributions (including foundation capital) can be deducted and the taxation of contributions as a gift depend to a large extent on whether the foundation operates a tax-exempt branch in Switzerland.</p>
<p><i>Can a person based in your country deduct donations to a common-benefit foundation in Switzerland from their tax?</i></p>	<p>Under German income tax law there are many different options for deducting donations to public-benefit institutions such as foundations. For example donations of up to 20 % of taxable income may be deducted, and it is basically possible to carry forward donations exceeding the deductible limits to subsequent fiscal years indefinitely. Added to this, a donor can deduct up to EUR 1 million (and a jointly-taxed married couple up to EUR 2 million) for a donation to the endowment of a foundation. The deduction can be taken in the year of donation and/or divided over the following nine years.</p>	<p>Private individuals in Austria may deduct donations to public-benefit foundations of up to 10 % of their total income, provided the Liechtenstein foundation is on the Austrian Federal Ministry of Finance’s list of privileged donees.</p>	<p>Under Swiss tax law, only contributions to charitable organisations with their registered office in Switzerland are tax-deductible. Contributions to foreign organisations are only possible if they have a branch in Switzerland or a subsidiary foundation that for their part qualify for a tax exemption in Switzerland on the basis of their public-benefit activity.</p> <p>In practice, however, the strictness with which these rules are interpreted varies from canton to canton.</p>

Special points to consider in Germany

Alongside issues related to land transfer and income tax, the main thing is to avoid incurring gift tax. In line with Germany's legislative goals, the German law on gift tax grants unlimited tax exemption for assets transferred to domestic non-profit foundations.

Foreign foundations, including Liechtenstein foundations, will only be granted this exemption subject to the additional requirement that there be a reciprocity agreement between Germany and Liechtenstein as the state in which the foundation is based that grants a corresponding tax exemption if a citizen of Liechtenstein establishes a domestic foundation. According to the Federal Ministry of Finance in Germany, we are not likely to see an agreement of this sort in the foreseeable future.

Nonetheless, the foundation will not automatically be taxed at the rate of 30 % to 50 % that would normally apply under tax class III, the tax class for foreign foundations. This is thanks to another condition whereby tax exemption is granted if contributions are earmarked for exclusively non-profit or public-benefit purposes and the application of the funds for the specified purpose is guaranteed. This is generally the case if a donation to the endowment is adequately earmarked.

In individual cases, however, according to the financial administration the requirement that a contribution be devoted to non-profit purposes is subject to the comprehensive rules set down in §§ 51 ff. of the German tax code. In any case, given the potential pitfalls, to avoid unpleasant surprises it's essential to seek detailed advice – especially in relation to matters regarding the domestic relevance of the foundation's activities and other requirements in German law on non-profit organisations. These include limitations on the support paid to founders and their families: while up to one third of a foundation's income may be paid to the founder and his or her next of kin by way of 'reasonable maintenance', when setting up and running a foundation it's important to pay close attention to how these terms are interpreted. It's also advisable to consult with the financial authorities in advance to get prior assurance in each particular case.

Special points to consider in Austria

Inter vivos contributions of movable property and claims for money to non-profit legal entities in Liechtenstein are exempt from tax provided an annual report on activities and financial statements are produced. Transfers of land are generally exempt from foundation entry tax. However, they could incur real estate transfer tax on land in Austria.

If the Austrian financial authorities do not recognise public-benefit or non-profit status, foundation entry tax (at a rate of between 5 % and 10 % depending on the set-up of the foundation) will be incurred in accordance with the tax treaty between Austria and the Principality of Liechtenstein.

Special points to consider in Switzerland

Deductible donations are limited to 20 % of taxable income or taxable profit.

A transfer made to a foreign public-benefit foundation that is not accepted from a Swiss tax point of view is essentially treated as a gift. This is subject to gift tax; here the donee must pay the tax, but the donor is liable for the tax on a subsidiary basis.

International networks of foundation jurisdictions

Data on the international foundation business

The European Foundation Centre (EFC) puts the number of public-benefit foundations throughout Europe at over 110,000. According to estimates, these foundations have assets totalling more than EUR 350 billion, they collectively spend around EUR 100 billion annually, and they provide employment to over a million people. By way of comparison, total assets in the US foundation sector amount to around EUR 300 billion.

Neighbouring countries Switzerland and Germany are rivals in this business, with around 13,000 and a good 20,000 public-benefit foundations respectively. Austria figures less prominently, with only 660 public-benefit foundations.

The road to a pan-European foundation (FE)

In 2009 various parties started work on a study into the feasibility of a European Foundation Statute. The process, which included consultations in 2009 and 2011, culminated in 2012 with a proposal for a statute. According to the feasibility study, the statute would result in savings of up to EUR 100 million a year. The proposal contained the first transnational definitions of public-benefit purposes and principles for the pan-European recognition of public-benefit organisations.

Until mid-2014, interested parties still hoped for rapid approval of the project, but these hopes were dashed shortly before the end of the year when Jean-Claude Juncker, President of the European Commission, removed the creation of this new legal entity from his agenda for the coming year. The reason given for this step was a lack of consensus among member states. Austria had already decided against the proposal. The idea of a pan-European foundation now looks to be dead and buried.

International players

The European Foundation Centre (EFC) is an international advocacy group with 230 members and partner organisations in 37 countries. Members tend to be larger foundations. The EFC has been in existence since 1989.

As the name suggests, DAFNE (Donors and Foundation Networks in Europe) is a network of national associations (24 throughout Europe). DAFNE represents around 6,000 foundations via these networks. The DAFNE secretariat is hosted by the EFC. Since 2013 the VLGS has also been a member of DAFNE.

DAFNE and the EFC have been the driving forces behind proposals to create a pan-European foundation (see box). The advocacy groups in Germany and Switzerland are the Association of German Foundations (Bundesverband Deutscher Stiftungen) and SwissFoundations (the Association of Swiss Grant-making Foundations).

Developments and challenges

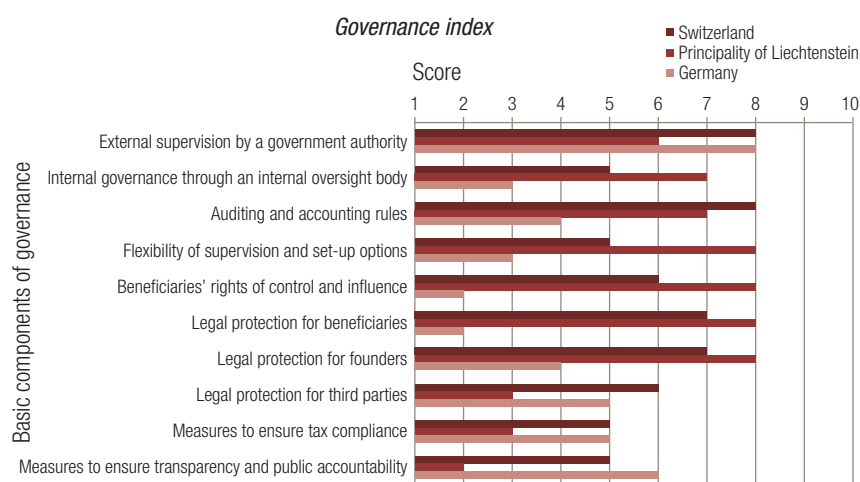
The international foundation business is growing rapidly. This development is facilitated by the increasingly international nature of the business: an ever-larger number of foundations, donors and founders, keen to concentrate their resources, are also operating across borders and are no longer limiting themselves to a single jurisdiction.

The sheer number of different laws governing foundations within the EU poses a major challenge. In some cases this can make the process of having legal personality recognised in different countries and relocating a foundation difficult. Alongside obstacles related to administration and tax law, there are also psychological barriers.

What are the differences between the various foundation jurisdictions?

At the 2014 meeting of members of the VLGS in Schaan, Dr Goran Studen from the University of Zurich presented an interesting comparison between the foundation jurisdictions Liechtenstein, Switzerland and Germany made on the basis of specific criteria. The originator of this approach, Professor Dominique Jakob (also from the University of Zurich), stresses that it is only intended as a model, and that the findings it contains are subjective, provisional, and merely the result of estimates. The actual study that would be necessary to definitively assess these figures has yet to be conducted. So rather than treating it as an empirically proven assertion that one jurisdiction is better than the other in a certain area, this comparison should be seen as a model designed to facilitate such assertions.

Professor Jakob bases his comparison on a subjective assessment of a range of factors resulting in an overall rating of these foundation jurisdictions in terms of governance and liberality. While Switzerland is just ahead when it comes to governance, Liechtenstein is the clear leader in terms of its liberal legal framework. Germany brings up the rear on both counts. Given the importance of Germany for the Liechtenstein foundation sector, these indices suggest there is considerable potential.



(Subjective) governance index: **Switzerland = 6.2 | Liechtenstein = 6.0 | Germany = 4.2**



(Subjective) liberality index: **Switzerland = 6.7 | Liechtenstein = 7.8 | Germany = 4.8**

(Quelle: Jakob, in: Der Schweizer Stiftungsreport, S. 13 ff.)

What next? Legal developments in Liechtenstein and worldwide

We also had the opportunity to talk in detail with Professor Francesco A. Schurr, who holds the chair of Company, Foundation and Trust Law at the University of Liechtenstein.



Prof. Francesco A. Schurr,
University of Liechtenstein

“Protected cell companies represent a huge competitive advantage”

PwC: Professor Schurr, how do you see developments in Liechtenstein in terms of its role as a foundation jurisdiction in these times of change?

Prof. Schurr: Ever since 1926 when the Persons and Companies Act (PGR) entered into force, the Principality of Liechtenstein has been striving to offer international clients an optimum toolbox for structuring their private assets. Since then Europe, and the rest of the world, have experienced their share of uncertainty, crisis and economic and political challenges. Throughout all these phases of history, Liechtenstein has seen itself as a solid option for those seeking a sustainable base for achieving their philanthropic goals.

There's always been stiff competition between different jurisdictions in the international structuring business, for both private-benefit entities and philanthropic foundations. In recent years we've seen a radical paradigm shift, which has left its mark on Liechtenstein too.

PwC: How has Liechtenstein responded to the global paradigm shift in financial services?

Prof. Schurr: Players in Liechtenstein financial services are currently working proactively to harness changes in the international financial world so that we can position ourselves internationally with our niche products. This applies in particular to common-benefit foundations.

On 1 January 2015, Liechtenstein adopted a model well established in many jurisdictions worldwide by amending its company law to incorporate the protected cell company (PCC; see box).

PwC: What new options do protected cell companies offer in terms of philanthropy?

Prof. Schurr: The Liechtenstein philanthropy sector can now offer the option of setting up a cost-efficient umbrella foundation within which many different charitable projects operate as individual cells with separate assets and liabilities. Unlike the umbrella foundations ('Dachstiftungen') familiar in Germany, Switzerland and other countries, there is real separation for liability purposes, making the protected cell structure a very attractive legal form for common-benefit foundations. To this extent, the introduction of the PCC represents a huge competitive advantage for the Liechtenstein jurisdiction.

I believe we should now also be considering a complete normative separation between private-benefit and common-benefit foundations. The legislators should designate the private-benefit foundation as a "private foundation" to ensure that in the future, the term "foundation" is only used for common-benefit vehicles, as it is in the traditional European approach to the law. This normative separation wouldn't be merely cosmetic. One positive effect is that it would certainly reinforce the trust of international philanthropy investors by making the legal structure of the common-benefit foundation even more transparent. This legislative move would also be a key milestone in the Principality of Liechtenstein's already successful reputation campaign.

*“Civil-law
recognition in Europe
repeatedly is refused
without persuasive
reasons”*

PwC: How do you see ongoing legal developments in Europe affecting Liechtenstein’s status as a base for foundations?

Prof. Schurr: Since the full amendment of the law in 2009, Liechtenstein foundations have again gained considerably in popularity, especially on the public-benefit side. On the other hand, you can’t turn a blind eye to the dangerous developments we’re seeing all over the world, also in Europe.

By this I mean the global legal problem that foundations and trusts in offshore jurisdictions have difficulties when it comes to recognition in civil law.??? Efforts to structure family assets for charitable purposes often involve foreign countries, because in most cases beneficiaries are based in different countries around the world.

Increasingly, there are practical obstacles to recognition in countries that view the consolidation of private wealth as undesirable or as a political problem. This problem is acute, also for foundations and other legal entities in Liechtenstein. The country’s small size means that cross-border issues relating to legal entities, especially foundations, are the order of the day. In practice we’re seeing foreign courts repeatedly refuse, without persuasive reasons, to recognise Liechtenstein foundations.

All foundations – both corporate and common-benefit foundations – are equally affected by the risk of non-recognition. My team and I are currently working on an externally funded research project to gather and evaluate data on the threatened or actual non-recognition of Liechtenstein entities. Our aim is to get a clear, up-to-date empirical picture of this issue.

The goal of the project is to respond directly to the widespread misinterpretation of Liechtenstein law by foreign courts, limit the damage for Liechtenstein, and create legal certainty.

One of Liechtenstein’s main advantages as a foundation jurisdiction by comparison with Switzerland is the necessity of civil-law recognition within the EU. In this respect, the decision to join the EEA in 1995 was a blessing for Liechtenstein as a foundation jurisdiction.

PwC: What is the University of Liechtenstein’s contribution to the development of the Principality as a centre of philanthropy?

Prof. Schurr: The university’s Institute of Financial Services, the Liechtenstein House of Finance, has various professorships in law, finance and tax. This interdisciplinary approach to teaching and research is a great asset for Liechtenstein as a base for foundations. My chair, which is also part of the institute, organises a regular Foundation Law Conference each autumn, featuring presentations on current topics in foundation law given by experts from Liechtenstein and abroad. Their contributions are published in the form of an annual volume of conference proceedings. My department offers study programmes tailored to the requirements of budding and future experts in the field of foundations.

In all my academic work on behalf of Liechtenstein as a foundation jurisdiction I believe it’s essential to network closely with the domestic financial services scene, as well as with colleagues from business and the academy abroad. For this reason I foster close academic ties with fellow specialists in Switzerland, Germany, Austria, Italy and common law jurisdictions to ensure that wherever in the world they arise, the latest trends in philanthropy find their way to us here in Liechtenstein and can be immediately pursued.

“Liechtenstein joining the EEA in 1995 was a blessing for the Liechtenstein foundation business”

PwC: How do you see the competition between the various jurisdictions offering a base for philanthropic activities developing in the medium to long term?

Prof. Schurr: In the past, tax advantages were the key factor for people choosing a location to structure their assets. Now, as mentioned before, there’s been a paradigm change, and a completely new set of considerations applies. Modern philanthropists now take account of a whole list of different factors when deciding on where to base their foundation.

First up is foundation governance. Naturally anyone devoting substantial amounts of money to charitable purposes and the long-term good of society wants absolute assurance that these assets will always be invested and distributed in compliance with their purpose, and they want to completely rule out any risk of misuse. The new “made in Liechtenstein” foundation governance framework in place since 2009 provides a balanced mix of judicial independence and government oversight.

Charitable givers often also take account of political factors. The Principality’s political independence and political stability – the latter thanks to the monarchical element – continue to inspire the trust of philanthropic Investors.

But supervision is also sometimes the deciding factor in the choice of location. Here I’d point out the considerable expertise and flexibility of STIFA, the authority that oversees common-benefit foundations in Liechtenstein. Despite the stringent requirements STIFA imposes to guarantee the sustainable, appropriate use of foundation assets, in my experience they also adopt a consultative approach that means foundation bodies and those affected can always find appropriate solutions.

Protected cell company (PCC)

Since 1 January 2015 a new organisational form has been permitted in Liechtenstein, the protected cell company (as defined in art. 243 ff. PGR). PCCs, which must also be entered in the commercial register, consist of a core (or non-cellular part) and one or more cells, which are separate from each other. The assets of the individual cells and the core are separate; the assets of the core are not available to meet liabilities of the cells, or vice versa; and the assets of individual cells are not available to meet liabilities of the other cells.

Until now it was possible to group foundations together under an umbrella foundation. A PCC, by contrast, has the advantage that the assets and liabilities of small individual foundations can be separated even when administration takes place via the core.

PCCs also exist in various other European jurisdictions (Luxembourg, Italy, Ireland and Malta), but not in Switzerland or Germany.

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