



THE LIECHTENSTEIN FOUNDATION

Foundations have a long tradition in Liechtenstein and play a significant role, serving as a multifunctional instrument for wealth management, succession planning, and philanthropic purposes. This brochure provides an overview of the legal framework, establishment, management, and tax implications of foundations in Liechtenstein, aimed at providing clarity and understanding for founders, beneficiaries, and professionals.

1. GENERAL CHARACTERISTICS

A foundation is established as a legally and economically independent entity for a specific purpose, through an unilateral declaration of intent by the founder. The founder endows the foundation with assets, defines its purpose as well as its beneficiaries. Upon formation of the foundation, its assets are legally distinct from the founder's personal assets.

A foundation, being a separate legal entity, has no owners or members, but only beneficiaries for whose benefit the foundation's purpose is fulfilled. The founder may also be a beneficiary and can reserve certain rights for himself.

2. FOUNDATION PURPOSE

The purpose of the foundation is one of the three «essentialia negotii» of the foundation's establishment. The founder himself has to determine the foundation's purpose. It is not permissible for the foundation council to make this determination. In principle, the founder has the liberty to determine any permitted purpose for the foundation. Once a foundation has been established, its purpose can only be changed within the framework of strict legal requirements.

In general, the purpose of a foundation can be for either charitable (public) benefits or private benefits.

The activities of charitable foundations are primarily dedicated to charitable purposes, benefitting the general public. In contrast, private-benefit foundations aim to fulfill private and personal needs, notably in form of family and company foundations. There is also the possibility for mixed-purpose foundations.

A family foundation primarily aims to fund education or training, support the well-being of family members or similar family interests. The family foundation is one of the most established types of foundations in Liechtenstein.

A company foundation aims to hold and administer shares in companies. As a shareholder, the foundation usually has significant influence on the company's strategy. Therefore, its shareholding is not merely an investment of the foundation's assets, but a core aspect of its purpose.

Foundations are not allowed to pursue a commercial purpose. However, a foundation is permitted to engage in commercial activities if such activities directly support its charitable purpose or are allowed on a special statutory basis. Furthermore, for private-benefit foundations, engaging in commercial activities is permissible if it is necessary for the systematic investment and management of the foundation's assets.

3. ESTABLISHMENT OF THE FOUNDATION

3.1 FOUNDATION DECLARATION

The foundation declaration is another «essentialia negotii», and is a unilateral declaration of intent by the founder, through which he expresses his intention to establish a foundation. In general, a foundation is established during the lifetime of the founder (inter vivos) through a foundation declaration, or upon the founder's death (mortis causa)

through a testamentary disposition or an inheritance contract. A foundation established *inter vivos* may have one or more founders, who can be natural or legal persons from either domestic or foreign jurisdictions, residing almost anywhere. In practice, foundations are mostly established through a «fiduciary formation», in which a Liechtenstein trustee acts on behalf of the founder. This arrangement prevents the disclosure of the founder's identity to authorities. The foundation declaration must be in written form and requires the notarized signature of the founder, or of their designated representative.

3.2 FOUNDATION CAPITAL

The foundation capital is the amount specified in the foundation deed, contributed to the foundation upon its establishment. The foundation's minimum capital is set at CHF 30 000 (alternatively EUR 30 000 or USD 30 000). Typically, prior to the establishment of the foundation, this capital is deposited with a Liechtenstein, Swiss or EEA bank in a blocked account. Subsequently, the bank issues a proof of capital, serving as confirmation to the Commercial Register that the required minimum capital has been paid up.

The founder themselves or third parties may increase the capital at any time.

3.3 FOUNDATION DOCUMENTS

The foundation declaration is outlined in the foundation documents. The foundation deed (articles of association, subsequently also «Articles») is the principal document and must be signed and notarized by the founder or their representatives – in most cases the trustee acting as an indirect representative. The foundation deed must include the essential information such as the foundation's name, purpose, structure and operation of the foundation council, as well as the identity of the founder or the representative.

In addition to the Articles, the founder may also draw up by-laws that include provisions not mandatory for

the Articles. These by-laws also require the notarized signature of the founder or their representative. By-laws are only permissible if there is a direct reference in the Articles and do not conflict with them.

Furthermore, regulations can be drawn up that extend beyond the Articles and by-laws.

Lastly, in a document known as a letter of wishes, which confidentially addresses the foundation council, the founder may outline his intentions and desires regarding the management of the foundation and the distribution of its assets. However, such a letter of wishes is not legally binding for the foundation council.

3.4 REGISTRATION AND/OR DEPOSITION

For a private-benefit foundation, registration in the Commercial Register is not mandatory. The foundation acquires its legal entity status upon signing the foundation deed, which must include the three «essentialia negotii». The foundation documents do not need to be filed with the Commercial Register. Instead, a formation notification must be submitted to the Office of Justice within 30 days following the foundation's establishment. Consequently, the information about the founder as well as foundation's beneficiaries is not made public.

In contrast, charitable foundations and private-benefit foundations that engage in commercial activities are required to register in the Commercial Register and obtain legal status upon registration.

4. MANAGEMENT OF THE FOUNDATION

4.1 FOUNDATION COUNCIL

The foundation council is the supreme governing body of the foundation, consisting of at least two members. These members can be natural or legal persons, from either domestic or foreign

jurisdictions, and may reside or be located almost anywhere. However, Article 180a of the Law on Persons and Companies (PGR) stipulates that at least one member of the foundation council must be a domestic trustee or a person with equivalent status (known as a «180a-person»). Additionally, the founder themselves and the beneficiaries may serve as members of the foundation council. The foundation council manages the foundation's operations and represents it externally. It is responsible for the fulfilment of the foundation's purpose as specified in the foundation documents. Furthermore, the foundation council is responsible for managing the foundation's assets in a manner that aligns with the founder's intention, the foundation's purpose, and the principles of prudent management.

4.2 OTHER BODIES

The founder may specify in the Articles that additional bodies are or can be appointed, which could include a protector or an advisory board. These bodies may have the authority to provide advice, grant approvals, give instructions, or exercise a veto. Furthermore, an auditor can be appointed as an additional body. While auditors are optional for family foundations, it becomes mandatory for charitable foundations and private-benefit foundations engaged in commercial activities or stipulated in the Articles. In general, the founder has the discretion to choose individuals for these positions and to outline their specific powers. Since these additional bodies are not defined by law, their competencies and responsibilities must be described in the foundation documents.

4.3 SUPERVISION

Charitable foundations are subject to supervision by the Foundation Supervision Authority (STIFA). Private-benefit foundations may also be subject to the supervision of the STIFA if such provisions are stipulated in the Articles. STIFA is required to ensure, ex officio, that the foundation's assets are managed and used in accordance with the foundation's purpose. To this end, it can request all relevant

information from the foundation's governing bodies and review the financial records.

5. BENEFICIARIES

The beneficiaries are the entities or individuals designated to fulfill the foundation's purpose, making their identification one of the three «essentialia negotii» in the establishment of a foundation.

Beneficiaries are classified based their identifiability, determined through objective criteria, or categorized more broadly. Thus, a foundation has either entitled or discretionary beneficiaries. Their designation occurs in the foundation's Articles or its by-laws, with the latter requiring a direct reference in the Articles.

There are four distinct categories of beneficiaries: (1) Entitled beneficiaries, who have a legal claim to a financial benefit from the foundation; (2) Discretionary beneficiaries, who have a potential beneficial interest that is subject to the discretion of the foundation council or another designated body. Discretionary beneficiaries do not have a legal claim to benefits from the foundation; (3) Prospective beneficiaries, who, upon meeting certain conditions or at a future date, will have a legal claim to a financial benefit from the foundation; (4) Ultimate beneficiaries, who are entitled to receive the remaining assets of the foundation upon its dissolution.

The distinction between beneficiaries with a legal claim and discretionary beneficiaries is crucial for taxation and asset protection purposes. For family foundations, provisions can be included in the Articles to protect beneficiaries' interests from creditors through safeguarding proceedings, compulsory enforcement, or bankruptcy.

Beneficiary designations, contained in documents not required to be disclosed to the Commercial Register or other authorities, remain confidential.

6. DISSOLUTION, TERMINATION

A foundation may be dissolved due to the initiation of bankruptcy proceedings against its assets, a court-ordered dissolution, the foundation council's resolution for dissolution based on specified criteria in the foundation deed, or if a decision to reject bankruptcy due to insufficient assets becomes legally binding.

For supervised charitable foundations undergoing dissolution, the STIFA requires notification of the dissolution and its reasons. Dissolution leads to liquidation and termination processes in line with PGR's general legal entity provisions. Foundations obligated to have audits must submit the final audit report to STIFA post-liquidation, reflecting the foundation's activities during this period, for STIFA's approval for cancellation. Foundations exempt from audit requirements undergo a final review by STIFA before being removed from the Commercial Register.

7. TAXES

The tax implications for a foundation in Liechtenstein depend significantly on its structure. Thereby, it is crucial to distinguish whether the foundation is classified as transparent or non-transparent for tax purposes. For a transparent foundation, the assets and income of the foundation are still attributed to the founder or the beneficiaries of the foundation. In contrast, a non-transparent foundation is considered an independent taxable entity. According to Liechtenstein tax law and practice, the sole criterion for determining the foundation's transparency is its revocability. A foundation with a right of revocation is deemed transparent; without such a right of revocation, the foundation is considered non-transparent. The right of revocation – if any – is defined in the foundation deed. However, the criteria for determining transparency can differ substantially across various jurisdictions.

Foundations, as legal entities, are subject to a corporate income tax of 12.5% (flat tax). There is an annual minimum corporate income tax of CHF 1'800, credited against the tax liability. Under certain conditions, a foundation can qualify as a Private Asset Structure (PAS), subjecting it only to the annual minimum tax of CHF 1'800, with no requirement to file a tax return.

Furthermore, according to Liechtenstein tax law, there is no withholding tax on dividends, interest, and capital gains. There is also no capital tax and no inheritance, or gift tax. Distributions to beneficiaries are taxed based on the tax law of the beneficiaries' country of residence.

Liechtenstein currently maintains double taxation agreements (DTA) with approximately 23 countries, enabling foreign taxes to be recognized through credits or exemptions in line with the respective applicable DTA.

Overall, the taxation of foundations under Liechtenstein tax law is attractive and plays a significant role in facilitating asset accumulation over time.

For detailed insights into the Liechtenstein tax system, we invite you to read our comprehensive article available on our website.

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