

# Business Liechtenstein Company Formation

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## Legal forms

- Public Limited Company (PLC., Corp.)
- Limited Liability Company (LLC., Ltd.)
- Establishment
- Trust Enterprise (Trust reg.)
- Trust (Trust)
- Foundation

## Business forms

- Holding
- Trading Company
- Asset Management Company
- Intellectual Property Box (IP- Box)
- Funds
- Family Office

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# Business Liechtenstein Company Formation

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*Your LCG Team*

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# Public Limited Company (PLC., Corp.) in Liechtenstein

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## I. Legal structure of the public limited company in Liechtenstein (PLC., Corp.)

### 1. Concept

The Liechtenstein public limited company (PLC., Corp.) is a juridical person with a proprietary company whose capital (share capital), which is fixed in advance, is segmented into partial sums (shares) and for whose liabilities the company's own assets are solely liable. Thus the shareholders are obligated solely to render service as laid down in the articles of association and are not personally liable for the liabilities of the Liechtenstein public limited company (PLC., Corp.).

### 2. Purpose

The purpose of a Liechtenstein public limited company (PLC., Corp.) may provide for the pursuit of commercial or non-commercial activities in any legally permissible form, e.g. the trade of goods, the acquisition of investments, financing, the administration of real estate, patent commercialisation, leasing, the management of the assets for certain beneficiaries or for purely charitable purposes. Bank transactions, however, are reserved for banks, asset management companies and Liechtenstein trustees licensed to act for third parties.

### 3. Founding

The founding of the Liechtenstein public limited company (PLC., Corp.) is created by means of a formation deed and articles of association, which must be submitted to the competent authorities; it can be done in the form of simultaneous formation or gradual formation. Two natural or juridical persons are required for the founding, which is usually done on a fiduciary basis. Immediately after the founding, however, all shares may be combined in the hand of one person (single-person PLC., Corp.). The resolutions on the founding of a Liechtenstein public limited company (PLC., Corp.) are to be certified publicly by a certified notary. The formation of a Liechtenstein public limited company (PLC., Corp.) comes into being upon its entry into the Commercial Registry (Public Registry).

### 4. Nominal capital or minimum capital

The minimum capital of the Liechtenstein public limited company (PLC., Corp.) amounts to CHF/EUR/USD 50,000; it is mandatory that it is contributed with the founding. The share capital can consist of contributions in kind or a combination of cash and contributions in kind. A minimum

of 25% of each share has to be paid concurrently in cash or covered by contributions in kind that are described in detail in the articles of association. The public limited company (PLC., Corp.) can dispose freely of the share capital upon the entry into the Commercial Registry.

## 5. Company name

The Liechtenstein public limited company (PLC., Corp.) can choose the company's name freely in any language and can use imaginative names. Special permission must be obtained if one is intending to use national and international state or place names in a company name.

## 6. Organisation

### 6.1. Governing bodies

The General Meeting of the shareholders is the governing authority of the Liechtenstein public limited company (PLC., Corp.). The General Meeting has to be summoned at least once a year to approve the annual accounts and deal with any other legal duties and those laid down in the articles.

### 6.2. Board of directors

The administrative body of the Liechtenstein public limited company (PLC., Corp.) is the board of directors, which can consist of one or several members and is elected by General Meeting. The board of directors is responsible for the Management and representation of the Liechtenstein public limited company (PLC., Corp.). In addition, it has all powers that have not been assigned or reserved for another body.

At least one member of the board of directors must have his law office address in Liechtenstein and be in possession of certain professional qualifications. In addition to this Liechtenstein administrative body, any number of natural or juridical persons, resident in Liechtenstein or abroad, may be co-opted.

### 6.3. Auditors or control agency

It is mandatory that public limited companies (PLC., Corp.) in Liechtenstein appoint auditors. The auditors are to audit the annual accounts and submit them to the Liechtenstein tax authority as well as make a report to the General Meeting.

### 6.4. "Qualified" managing director

A public limited company in Liechtenstein that is a company engaged in commercial activity has to have a so-called qualified managing director who is entered into the Commercial Registry.

### 6.5. Representative

A public limited company (PLC., Corp.) in Liechtenstein that is not engaged in commercial activities and thus does not usually have a domestic postal address has to appoint a representative.

The representative has to be entered into the Commercial Registry and acts as the official postal addressee of the company and as a connecting link with the authorities.

#### *6.6. Beneficiaries*

The shareholder of a Liechtenstein public limited company (PLC., Corp.) is entitled to the profit and the assets remaining after liquidation of the company.

### **7. Liquidation**

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The liquidation of the Liechtenstein public limited company (PLC., Corp.) can be initiated at any time on the basis of a resolution of the General Meeting. The deletion in the Commercial Registry is effected no earlier than at least six months after the third call to creditors.

## **II. Fiscal structure of the public limited company in Liechtenstein (PLC., Corp.)**

A stamp duty in the form of a sales charge of 1% has to be paid in the case of the founding of a Liechtenstein public limited company (PLC., Corp.) or in the case of a possible capital increase. A general exemption limit of CHF 1 million applies. In this respect, the sales charge for the legal minimum or nominal capital in the amount of CHF 50,000 does not accrue.

Furthermore, Liechtenstein public limited companies (PLC., Corp.) have to pay an annual income tax. According to the concept of the private wealth structure (Privatvermögensstruktur, PVS), provided by the tax law that took effect on 1 January 2011 in Liechtenstein, Liechtenstein public limited companies (PLC., Corp.) qualifying as PVS are taxed only with the minimum income tax of CHF 1,200 annually. The PVS tax status is usually granted to companies that are not commercially active.

Liechtenstein public limited companies (PLC., Corp.) that are commercially active, however, are subject to the general income tax of 12.5%.

The tax reform in Liechtenstein also entails the tax exemption of dividends. A Liechtenstein public limited company (PLC., Corp.) is also exempt from the payment of capital and coupon tax.

## **III. Effective structure of the public limited company in Liechtenstein (PLC., Corp.)**

Alongside the issuance of nominal shares, the Liechtenstein public limited company (PLC., Corp.) allows for the issuance of bearer shares; a minimum nominal value is not prescribed. The transfer of bearer shares is made without a form requirement. In addition, the issuance of voting shares is possible. Liechtenstein law does not prescribe qualifying shares for the management.

Due to these advantages, the legal form of the Liechtenstein public limited company (PLC., Corp.) is interesting for large companies as well as medium-sized companies.

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# Limited Liability Company (LLC., Ltd.) in Liechtenstein

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## I. Legal structure of the limited liability company (LLC, Ltd.) in Liechtenstein

### 1. Concept

Several persons, firms or legal entities under private or public law can associate for any purpose in such a way that they constitute a limited liability company (LLC, Ltd.) in Liechtenstein. The liability of every shareholder of the Liechtenstein limited liability company (LLC, Ltd.) is limited to a certain amount.

### 2. Purpose

The purpose of a Liechtenstein limited liability company (LLC, Ltd.) may provide for the pursuit of commercial or non-commercial activities in any legally permissible form, e.g. the trade of goods, the acquisition of investments, financing, the administration of real estate, patent commercialisation, leasing, the management of the assets for certain beneficiaries or for purely charitable purposes. The company purpose, however, defines what the shareholders want to achieve with the company and is often—but does not have to be—identical with the company object.

### 3. Founding

The formation of the Liechtenstein limited liability company (LLC, Ltd.) is done by means of the submission of the publicly notarised articles of association to the responsible authorities. It is not required that the founder or founders of the limited liability company (LLC, Ltd.) be present in person. The formation of a Liechtenstein Liechtenstein limited liability company (LLC, Ltd.) comes into being upon its entry into the Commercial Registry (Public Registry).

### 4. Nominal capital or minimum capital

The minimum capital of the Liechtenstein limited liability company (LLC, Ltd.) amounts to CHF/EUR/USD 30,000; it is mandatory that it is contributed with the founding. The contribution can be made in cash or as contribution in kind. The share capital of the Liechtenstein GmbH may be fixed at any amount; the primary deposit, however, which cannot be reclaimed, has to amount at least to CHF 50; as a contribution in kind, it has to be 100% paid in. A founding with contributions in kind requires that contracts on the contributions in kind are submitted together with the registration. In so doing, it has to be observed that each shareholder can own only one contribution in kind and that at least 20% has to be paid in or covered by contributions in kind

when the Liechtenstein limited liability company (LLC, Ltd.) is founded.

The share capital, however, can be used for operative purposes again immediately upon the founding of the Liechtenstein limited liability company (LLC, Ltd.).

## 5. Company name

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The Liechtenstein limited liability company (LLC, Ltd.) can choose the company's name freely in any language and can use imaginative names. Special permission must be obtained if one is intending to use national and international state or place names in a company name.

## 6. Registered office

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Insofar as the articles of association of the Liechtenstein limited liability company (LLC, Ltd.) do not provide differently, the registered office of the company is at the location where the centre of its administrative activity is, subject to the regulations on the registered office in terms of international relations.

## 7. Organisation

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### *7.1. Governing body*

The governing body of the Liechtenstein LLC, Ltd. is the Shareholders Meeting that formally convenes at once a year.

### *7.2. Administrative body*

The Liechtenstein limited liability company (LLC, Ltd.) has a board of directors consisting of one or several natural or juridical persons. It is elected by the Shareholders Meeting and assumes the management and representation of the Liechtenstein limited liability company (LLC, Ltd.).

### *7.3. Auditors or control agency*

A Liechtenstein limited liability company (LLC, Ltd.) either has to appoint auditors or assign through the articles of association the powers of control to the non-managing shareholders.

## 8. Liquidation

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The liquidation of the Liechtenstein limited liability company (LLC, Ltd.) can be initiated at any time on the basis of a resolution of the Shareholders Meeting. The deletion in the Commercial Registry is effected no earlier than at least six months after the third call to creditors.

## II. Fiscal structure of the limited liability company (LLC, Ltd.) in Liechtenstein

A stamp duty in the form of a sales charge of 1%, a minimum of CHF 1,000, however, has to be paid in the case of the founding of a Liechtenstein limited liability company (LLC, Ltd.) or in the case of a possible capital increase. A general exemption limit of CHF 1 million applies. In this respect, the sales charge for the legal minimum or nominal capital in the amount of CHF 50,000 does not accrue.

Furthermore, Liechtenstein limited liability companies (LLC, Ltd.) have to pay an annual income tax. According to the concept of the private wealth structure (Privatvermögensstruktur, PVS), provided by the tax law that took effect on 1 January 2011 in Liechtenstein, companies qualifying as PVS are taxed only with the minimum income tax of CHF 1,200 annually. The PVS tax status is usually granted to companies that are not commercially active.

The Liechtenstein limited liability companies (LLC, Ltd.) that are commercially active, however, are subject to a general income tax of 12.5% .

## III. Effective structure of the limited liability company (LLC, Ltd.) in Liechtenstein

The Liechtenstein limited liability company (LLC, Ltd.) can have the form of a single-member company, which is advantageous for an individual entrepreneur due to the limitation of liability; however, it also can assume the form of an operative unit or group company.

The Liechtenstein limited liability company (LLC, Ltd.) in practice is more suitable for the facilitation of an ongoing cost-effective operation than for the purpose of general asset management or asset protection.

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# Limited Liability Company (LLC, Ltd.) Articles of Association

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## I. Company, Registered Office, Duration, Purpose

### Article 1

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In accordance with Article 389 ff. of Liechtenstein's Persons and Companies Act, a Limited Liability Company with the name (name of the LLC.) with its registered office (place, municipality= the company's registered office) is formed. The duration of the company with respect to time is unlimited.

### Article 2

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The purpose of the company is .....

The company is permitted to establish branch offices in or outwith Liechtenstein and is permitted to have financial interests in other companies in and outwith Liechtenstein. The company is permitted carry on all commercial, financial and other activities which serve the purpose of the company.

## II. Nominal Capital, Initial Contributions, Membership

### Article 3

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The nominal capital of the company is 30,000 CHF and is divided into an initial contribution of 15,000 CHF and an initial contribution of 15,000 CHF. The nominal capital is fully paid up.

For all initial contributions, the shareholders' names; the sum of each contribution; the performance therein executed; as well as every transfer of a share in the company and any other any other change in these facts is required to be clearly stated in the company's own share register.

### Article 4

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In the case of an increase in the company's nominal capital, all of the company's shareholders have the right to subscribe to the new shares proportionate to their contributions hitherto.

## **Article 5**

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The sale or pledging of the company shares or of a part thereof requires the consent of all of the company's shareholders. The said consent must be in writing. The sale or pledging of a share in the company or of a part thereof shall first take effect on the company when the said transfer is verified by and registered with the company.

The rights of the company's shareholders to proceeds from gains and liquidation are not permitted to be transferred to third parties.

## **III. The Shareholders' Meeting**

### **Article 6**

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The supreme body of the company is the Shareholders' Meeting.

### **Article 7**

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The voting rights of the shareholders are measured in accordance with the initial contribution of each shareholder. One voting right is apportioned per 1,000 CHF. A shareholder is permitted to be represented by a fellow shareholder or by a third party. A power of attorney in writing is required therefor.

## **IV. The Company Management**

### **Article 8**

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The Company Management is the administrative body of the company. The Company Management may consist of one or several persons. The said persons are not required to be shareholders of the company. At least one of the Company Managers must live in Liechtenstein. The Company Management is appointed by the shareholders. The shareholders may at any time revoke the said appointment as long as the management of the company is not carried on by all of the shareholders.

### **Article 9**

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The Company Management is authorised to perform all acts in the company's name which involve the company's purpose and which are not allocated by law or by the Articles of Association to the Shareholder's Meeting.

The Company Management has the permission of the shareholders to perform the following legal transactions:

- The acquisition, sale and encumbrance of the real estate;
- The appointment of an authorised officer of the company and of a holder of a commercial power of attorney
- The formation of and closure of branch offices
- The formation, acquisition and sale of other companies or shareholdings in the said c companies

## V. Auditing

### Article 10

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The auditor(s) is to audit the annual accounts and to provide the General Meeting with a report thereupon.

## VI. Dissolution and Liquidation

### Article 11

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The Shareholders' meeting can decided to dissolve or to liquidate the company at any time subject to the provisions contained in statute and the Article of Associations. Unless the Shareholders' meeting appoint a different person, the liquidation of the company shall be effected by the director.

## VII. Notices and Official Announcements

### Article 12

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Notices to and the convening of the shareholders shall be done by the sending of letters to the addresses recorded in the company's share register. Official announcements shall be communicated via publication in Liechtenstein's national newspapers.

## VIII. Final Provisions

Insofar as not provided for by the Articles of Association, the statutory provisions apply to the company.

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# Establishment in Liechtenstein

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## I. Legal structure of the establishment in Liechtenstein

### 1. Concept

The establishment in Liechtenstein under private law is a legal form of its own that is not the equivalent to the legal form of public establishments known in other legal systems. The establishment in Liechtenstein is a legally separate and organised company with a distinct legal personality that pursues commercial purposes on a permanent basis and is entered into the Commercial Registry (Public Registry).

### 2. Purpose

The Liechtenstein establishment can have flexible structures and may provide for the pursuit of commercial or non-commercial activities in any legally permissible form, e.g. the trade of goods, the acquisition of investments, financing, the administration of real estate, patent commercialisation, leasing, the management of the assets for certain beneficiaries or for purely charitable purposes. Bank transactions, however, are reserved for banks, asset management companies and Liechtenstein trustees licensed to act for third parties.

The intended purpose of the Liechtenstein establishment has to make clear whether it engages in commercial activities or not. A business engaged in commercial activities is especially not given if the purpose of the Liechtenstein establishment is the investment and management of assets or the holding of investments or other rights.

### 3. Founding

The founding of the Liechtenstein establishment is created by means of a formation deed and articles of association, which must be submitted to the competent authorities. A natural person as well as juridical person may be the founder of the establishment. The Liechtenstein establishment, for whose liabilities the establishment's assets are liable, comes into being upon its entry into the Commercial Registry, thus attaining legal personality.

### 4. Nominal capital

The minimum capital of the Liechtenstein establishment amounts to CHF/EUR/USD 30,000 and can be segmented in shares (with or without security character). In this case, the minimum capital amounts to CHF/EUR/USD 50,000. The capital of the establishment can consist of contributions in kind or a combination of cash and contributions in kind; it may be increased at any time after

the founding. The Liechtenstein establishment can dispose freely of the capital upon its entry into the Commercial Registry.

## **5. Company name**

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The Liechtenstein establishment can choose the company's name freely in any language and can use imaginative names. Special permission must be obtained if one is intending to use national and international state or place names in a company name.

## **6. Registered office**

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Insofar as the articles of association of the Liechtenstein establishment do not provide differently, the registered office of the company is at the location where the centre of its administrative activity is, subject to the regulations on the registered office in terms of international relations.

## **7. Organisation**

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### *7.1. Supreme authority*

The supreme authority of the Liechtenstein establishment is the owner of the founder's rights as laid down in the articles of association. In the event that there are more owners of founder's rights, resolutions of the meeting of the rights owners require unanimity, if not stipulated differently in the articles of association.

### *7.2. Board of directors*

The board of directors, which can consist of one or more natural or juridical persons, is entitled to all competencies, which have not been assigned to the highest administrative body, i.e. the owners of the founder's rights in the articles of association. Both the management and the outward representation of the Liechtenstein establishment are incumbent on the board of directors. The members of the board of directors are liable for negligent or wilful breaches of duty toward the establishment and, in exceptional cases, also toward the owners of the founder's rights or creditors to the Liechtenstein establishment.

### *7.3. Auditors or control agency*

It is mandatory to appoint a control agency if the Liechtenstein establishment is engaged in commercial activity or if its purpose as laid down in its articles of association allows for such an engagement. In all other cases, the appointment of a control agency is optional. The control agency is liable for negligent or wilful breaches of duty toward the establishment, and, in exceptional cases, also toward the owners of the founder's rights or creditors to the establishment in Liechtenstein.

#### *7.4. Representative*

The representative who is to be entered into the Commercial Registry represents the establishment to the authorities in Liechtenstein. He is obligated to receive declarations and notifications of any kind as well as deliveries and letters from the Liechtenstein authorities and to ensure the safeguarding of files.

#### *7.5. Beneficiaries*

The articles of association or by-laws of the Liechtenstein establishment can provide for beneficiaries, i.e. natural or juridical persons to whom the proceeds of the establishment's assets or the assets themselves are to go. They are designated by the founder and have to be described in the articles of association or by-laws in such a way that they are definite or at least definable. The beneficial interest can be conditional, temporary, tied to a restriction or requirement and may be withdrawn at any time. In most cases, the beneficiaries are named only in the by-laws, since this document does not have to be deposited in the Commercial Registry and the anonymity of the beneficiaries is maintained. If no beneficiary is specified in the articles of association or by-laws, the owner of the founder's rights himself is considered the beneficiary.

### **8. Founder's rights**

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The founder's rights encompass all powers due to the founder of an establishment in Liechtenstein. They may be relinquished, bequeathed or otherwise transferred but they cannot be pledged or otherwise encumbered. The owner of the founder's rights concurrently is the supreme authority of the Liechtenstein establishment.

### **9. Liquidation**

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The Liechtenstein establishment can be liquidated at any time through a resolution of the supreme authority. A blocking period of six months starts as of the third call to creditors in the form of a publication of the liquidation resolution. Upon expiration of this period, the establishment will be deleted in the Commercial Registry on application by the liquidators; the legal personality will expire.

## **II. Fiscal structure of the establishment in Liechtenstein**

The taxation of the establishment in Liechtenstein is based on the founding purpose. For establishments that are a company engaged in commercial activities, a 1% formation tax has to be paid on the capital as laid down in the articles of association that exceeds the exemption limit of CHF 1 million. On application, the formation tax can be reduced to 0.5% for the capital exceeding the amount of CHF 5 million; to 0.3% for the capital exceeding CHF 10 million.

Furthermore, Liechtenstein establishments have to pay an annual income tax. According to the concept of the private wealth structure (Privatvermögensstruktur, PVS), provided by the tax law that took effect on 1 January 2011 in Liechtenstein, establishments qualifying as PVS are taxed only by the minimum income tax of annually CHF 1,200. The PVS tax status is usually granted to companies that are not commercially active. Liechtenstein establishments that are commercially active, however, are subject to the general income tax of 12.5%.

Furthermore, as a consequence of the tax reform in Liechtenstein, a Liechtenstein establishment is also exempt from capital and coupon tax. Dividends distributed by an establishment are also exempt from taxes.

### **III. Effective structure of the establishment in Liechtenstein**

The establishment in Liechtenstein can have the structure of a foundation or a corporate body, thus being an instrument either for commercial purposes or for asset management. Especially on account of this freedom of design, the corporate form of the Liechtenstein establishment has become more and more attractive for enterprises. In comparison to the public limited company (PLC., Corp.), the Liechtenstein establishment has an advantage insofar as the required minimum capital is lower and easier accounting and auditing obligations apply. In the following, the various manifestations of the Liechtenstein establishment shall be described:

#### **1. The typical trading establishment in Liechtenstein**

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In the usual case, the form of the establishment is a single-member company, in which the founder controls, directly or indirectly, all bodies of the Liechtenstein establishment or assumes all executive functions in his own person.

#### **2. Establishment organised under the foundation law or Liechtenstein establishment without founder's rights**

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This type of establishment without founder's rights entails that the board of directors exercises the rights of the founder. Similar to a foundation, the customer provides the administration with guidelines in terms of the exercise of the office. Otherwise, however, he has no influence on the Liechtenstein establishment, unless he obligates the members of the board of directors to comply with his instructions by dint of a contract of mandate.

#### **3. I. The establishment in Liechtenstein under stock corporation law**

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This type of establishment means that several persons participate in the founding; as with the public limited company (PLC., Corp.), the nominal capital Liechtenstein establishment is segmented into shares. The supreme authority is the meeting of the owners of founder's rights.

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# Trust Enterprise (Trust reg.) in Liechtenstein

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## I. Legal structure of the trust enterprise (trust reg.)

### 1. Concept

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The Liechtenstein trust enterprise, frequently referred to as trust reg., is an Anglo-Saxon company form that has become a part of Liechtenstein law. Under Liechtenstein law, the trust enterprise can be with or without legal personality; the latter, however, almost never occurs in practice. In as much as the articles of association do not contain a clear rule about whether a trust enterprise with or without legal personality has been formed, it shall be irrefutably assumed that it is a trust enterprise without legal personality.

Assets separated under a separate name or company with own legal personality constitute the Liechtenstein trust enterprise with legal personality. Only the trust fund is liable for the liabilities of the Liechtenstein trust enterprise

### 2. Purpose

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The purpose of a Liechtenstein trust enterprise may provide for the pursuit of commercial or non-commercial activities as long as it is not illegal or immoral. The purpose of a trust enterprise in Liechtenstein may consist of the arrangement for the planning of an estate or the trade with assets. What is mandatory, however, is that the intended purpose of the Liechtenstein trust enterprise has to make clear whether it is a company that engages in commercial activities or not. A company engaged in commercial activities is especially not given if the purpose of the Liechtenstein trust enterprise is the investment and management of assets or the holding of investments or other rights.

### 3. Formation

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The formation of the Liechtenstein trust enterprise is effected by means of the submission of the written articles of association that have been signed by the settlor and the trustee(s) to the responsible authorities. A natural or juridical person suffices for the formation of a Liechtenstein trust enterprise.

Unlike the Liechtenstein foundation, the Liechtenstein trust enterprise with legal personality is always to be entered into the Commercial Registry (Public Registry) and can be engaged in commercial activities without limitations.

#### **4. Minimum capital (trust fund)**

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The minimum capital of the Liechtenstein trust enterprise (trust fund) amounts to CHF/EUR/USD 30,000; it is mandatory that it be contributed with the formation in cash or as contribution in kind. The trust fund can be segmented into shares, with or without securities character, as well as gradually increased or decreased.

#### **5. Company name**

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The Liechtenstein trust enterprise can choose the company's name freely in any language and can use imaginative names. Special permission must be obtained if one is intending to use national and international state or place names in a company name.

#### **6. Organisation**

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##### *6.1. Governing body*

The supreme authority of the Liechtenstein trust enterprise is the settlor, i.e. the person who supplies the trust fund with assets or warrants them.

Both Liechtenstein practice and case law has more and more approximated the settlor, as to his position in the Liechtenstein trust enterprise, with the founder of a Liechtenstein establishment and granted him so-called settlor's rights similar to the founder's rights of the Liechtenstein establishment. Settlers may transfer, for instance, their settlor's rights to third parties. This development has the consequence that the typological differentiation between the trust enterprise (trust reg.) and the establishment becomes more and more blurred.

##### *6.2. Administrative body*

The trustees appointed in accordance with the articles of association constitute the board of trustees that is the administrative body of the Liechtenstein trust enterprise Both the management and the outward representation of the Liechtenstein trust enterprise are incumbent on the board of trustees. Inasmuch as the Liechtenstein trust enterprise is not engaged in any commercial activities within Liechtenstein, at least one member of the board of trustees must have his law office address in Liechtenstein and be in possession of certain professional qualifications. Within the framework of the law and the articles of association, the assignment of the management to individual trustees or third parties is possible.

##### *6.3. Auditors or control agency*

It is mandatory that Liechtenstein trust enterprises that are companies engaged in commercial activities or having the possibility of such activities laid down in their articles of association appoint auditors. Trustees, trust companies with a trustee concession, auditing firms and chartered accountants can act as auditors for the Liechtenstein trust enterprise.

#### *6.4. Representative*

The representative of a Liechtenstein trust enterprise acts as the official postal addressee of the company and as a connecting link with the authorities.

#### *6.5. Beneficiaries*

A beneficiary of the Liechtenstein trust enterprise is the person who, pursuant to the articles of association or the by-laws, is allowed to draw any present or future advantage from the Liechtenstein trust enterprise, either as share in the income or in the assets of the trust fund. The beneficial interest can be conditional, temporary, tied to a restriction or other requirement or be designated for impersonal purposes. It also can be revoked at any time inasmuch as the beneficial income was granted free of charge. Since the beneficiaries of the Liechtenstein trust enterprise are frequently listed in the by-laws, which other than the articles of association are not entered into the Commercial Registry or registered with a court, they are inaccessible to the public. If the articles of association or by-laws do not specify any beneficiaries, the settlor is considered beneficiary of the Liechtenstein trust enterprise.

The beneficiary rights, however, are in their entirety or partially transferable and heritable and they can be encumbered and pledged, insofar as this is not precluded in the articles of association of the Liechtenstein trust enterprise or an inviolable right exists.

### **7. Declaration**

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If the Liechtenstein trust enterprise is not a company engaged in commercial activities and its purpose as laid down in the articles of association does not provide for such a business, it shall draw up a statement of assets and liabilities every year.

### **8. Liquidation**

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The liquidation of the Liechtenstein trust enterprise can be initiated at any time after the conclusion of the liquidation process. The deletion in the Commercial Registry is effected no earlier than at least six months after the third call to creditors.

## **II. Fiscal structure of the trust enterprise (trust reg.)**

Liechtenstein trust enterprises are subject to an annual income tax, amounting to 12.5% of the taxable net income, at a minimum however of CHF 1,200. Liechtenstein trust enterprises that were granted the status as private wealth structure (Privatvermögensstruktur, PVS), provided by the tax law that took effect on 1 January 2011 in Liechtenstein, are taxed only with the minimum income tax of CHF 1,200 annually. The PVS tax status is usually granted to companies that are not commercially active.

### III. Effective structure of the trust enterprise (trust reg.)

The Liechtensteiner trust enterprise is versatile. It can be structured like a corporate body or assume features similar to a foundation. Depending on the organisational form, the Liechtenstein trust enterprise can be an instrument for commercial purposes or for asset management. In Liechtenstein, such trust enterprises are most frequent that have neither members nor participants nor shareholders, so the capital is also not segmented into shares. The company form of the Liechtenstein trust enterprise offers itself especially in cases in which the purpose of the company has not been fixed yet and a commercial purpose is perhaps to be pursued later.

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# Trust in Liechtenstein

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## I. Legal structure of the trust in Liechtenstein

### 1. Concept

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In Liechtenstein, the trust plays the role of the “trust settlement” or “family trust” of the Anglo-Saxon law.

With regard to the Liechtenstein trust, the settlor transfers to the trustee moveable or immovable assets or a right with the obligation to hold and use the trust assets for the benefit of one or more beneficiaries in one’s own name and as an independent legal entity with effect toward third parties. The Liechtenstein trust is not a juridical person but a legal relationship of a contractual nature.

Other than the English trust, Liechtenstein law does not know the principles of “rule against accumulations” or “rule against perpetuities” with regard to the trust. Hence it is possible in Liechtenstein to accumulate the proceeds from a trust as well as form a trust for an unlimited period of time.

### 2. Purpose

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As long as the purpose of a Liechtenstein trust is not illegal or immoral, it may provide for the pursuit of commercial or non-commercial activities.

### 3. Formation

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The Liechtenstein trust comes into being by means of a written agreement (trust deed) between the settlor and the trustee or else through a unilateral trust declaration and its acceptance. A trust deed regulates the relationships between the settlor, the trustee and the beneficiary and can be used by the settlor as an instrument for safekeeping of the interests of the beneficiary. The settlor of a Liechtenstein trust can, for instance, rule that creditors shall not have any access to the beneficial interest, neither through court order nor foreclosure or bankruptcy proceedings.

The Liechtenstein trust can be entered into the Commercial Registry (Public Registry) or just registered with the District Court. In the case of the registration with the District Court, however, the existence of a trust cannot be seen from any registry and will be disclosed only if a legitimate interest has been established. The entry into the Commercial Registry is optional, since the trust in Liechtenstein comes into being already upon the signing of the trust deed.

Letters of wishes have to be distinguished from the trust deed of a Liechtenstein trust. The settlor may enter his intentions into his own document in terms of the formation of the Liechtenstein trust, the exercise of the mandate by the trustee, the behaviour of the beneficiary and such like.

This letters of wishes are not legally binding; rather, they help the trustee to interpret the trust deed along the lines of the wishes of the Liechtenstein settlor. Both the trust deed and the letter of wishes are in principle to be disclosed to the beneficiary of a Liechtenstein trust provided that they have legal relevance.

Trusts can be formed in Liechtenstein under foreign law; only Liechtenstein law, however, applies in relation to third parties.

#### **4. Minimum assets**

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There are no minimum assets (asset contribution) prescribed for the Liechtenstein trust.

#### **5. Organisation**

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##### *5.1. Settlor*

The settlor is the founder of a Liechtenstein trust, who facilitates the trust by the provision of assets. A settlor can be a natural person or a juridical person.

The Liechtenstein trust is modelled on the English trust also in that the settlor, after the formation of the trust, is not entitled to any administrative or control rights and a permanent influence of the settlor on the trustee(s) is precluded. According to the English idea of a trust, the settlor is not entitled to any administrative or control rights after the formation. The settlor of a Liechtenstein trust can exercise only such rights that have been expressly fixed in the trust deed.

##### *5.2. Administrative body*

The administration of the Liechtenstein trust is incumbent on the trustees. The trustee has the authorisation and obligation to manage, use or dispose of the trust assets of the Liechtenstein trust in compliance with the trust regulations and the special obligations imposed on him by the law. In addition, he is obligated to give an account of his work. The trustee of a Liechtenstein trust has to keep the assets of the trust separate from his own assets. In the event that the trust assets perish or the trustee loses them, the beneficiary can, under certain conditions, demand the return of equivalent assets to the trust.

The Liechtenstein trust does not perish through the loss of all trustees if the settlor has not expressly determined in the trust deed that only a certain trustee can be deployed.

##### *5.3. Auditors or control agency*

An auditing firm, a protector, guardian or collator can be appointed so as to examine the compliance with the obligations written down in the trust deed of the Liechtenstein trust. The powers of the protector are to be elaborated in the trust deed. He might be granted extensive administrative powers; he will never, however, assume the legal position of the owner of the trust assets and therefore can never be urged to disclose the assets of the Liechtenstein trust.

#### *5.4. Representative*

The law does not prescribe a representative for Liechtenstein trusts.

#### *5.5. Beneficiary*

The beneficiary of a Liechtenstein trust is the person benefiting from the assets of the trust. As the founder, the settlor of a Liechtenstein trust has the right to designate either himself or any other natural or legal person as beneficiary. Moreover, the payment of the beneficial interest may begin with the transfer of the assets or else only after the death of the settlor. The rights of the beneficiary can be made dependent on the compliance with certain requirements. The rights may, for example, be limited or indefinite, transferable or non-transferable, inheritable or non-inheritable. The right of the beneficiary can be limited to the income of the trust or include the capital as well. Other than in English trust law, the rights of influence of beneficiaries of a Liechtenstein trust are considerably restricted. Thus the beneficiaries of a Liechtenstein trust only have a passive control function and are in principal not allowed to assume an active role.

### **6. Declaration**

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If the Liechtenstein trust is not a company engaged in commercial activities and its purpose as laid down in the articles of association does not provide for such a business, it shall draw up a statement of assets and liabilities every year.

### **7. Liquidation**

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The liquidation of the Liechtenstein trust can be initiated at any time after the conclusion of the liquidation process. Subsequently, the deregistration of the Liechtenstein trust can be effected within a few days.

## **II. Legal structure of the trust in Liechtenstein**

The assets held by the Liechtenstein trust are subject to an annual minimum income tax of CHF 1,200 annually, provided that the status of a private wealth structure (Privatvermögensstruktur, PVS), is given in accordance with the tax law that took effect on 1 January 2011 in Liechtenstein.

## **III. Effective structure of the trust in Liechtenstein**

The Liechtenstein trust is used in a similar way as the Liechtenstein foundation, because it is suitable for the long-term protection of assets or family assets as well as for estate planning.

The settlor of a Liechtenstein trust is free in the planning of his estate according to his wishes, for instance, so as to prevent family quarrels on account of the division of the estate or to ensure

basic needs of certain family members, such as sustenance, education or care. In the case of the protection of family assets, the settlor transfers to the trustee the power of disposition over the family assets through the establishment of the Liechtenstein trust. Thus it can be ensured that the family assets will be managed in a way that is beneficial to the entire family, ensuring its preservation over generations.

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# Foundation in Liechtenstein

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## I. Legal structure of the foundation

### 1. Concept

The Liechtenstein foundation refers to separate special-purpose assets with their own legal personality. These separate assets are set apart from the private assets of the founder; from that moment, they constitute the assets of the Liechtenstein foundation. Other than a corporate body under private law, a Liechtenstein foundation has no members, participants or shareholders. With the formation of a foundation, however, the founder is entitled to reserve certain rights, e.g. the revocation of the foundation or the right to amend the foundation documents, in the articles of association. Furthermore, information on the economic founder of the Liechtenstein foundation, the assets of the foundation, the beneficiaries and their entitlement is made available to the public.

### 2. Purpose

The Liechtenstein foundation can pursue non-commercial purposes or private-benefit purposes.

The non-commercial foundations in Liechtenstein may engage in commercial activities only insofar as they indirectly serve the achievement of their non-commercial purpose or if it is admissible on account of a special-law basis; hence the Liechtenstein foundation is not suitable to the pursuance of commercial ends.

A private-benefit Liechtenstein foundation, by contrast, allows the creation of a commercial operation insofar as it is required for the proper investment and management of the assets of the Liechtenstein foundation.

### 3. Formation

The formation of the Liechtenstein foundation is effected through a foundation declaration. This deed requires the written form as well as the notarised signature of the founder. Non-commercial and private-benefit Liechtenstein foundations that engage in commercial activities are to be registered in the Commercial Registry (Public Registry). They obtain legal personality upon registration. Insofar as a company that engages in commercial activities is not on hand, private-benefit Liechtenstein foundations, especially family foundations, are exempt from registration.

In the case of trust foundations, the settlor is considered the founder under the law. He is personally entitled to all founder's rights he has reserved.

#### **4. Nominal capital or minimum capital**

The minimum capital of the Liechtenstein foundation amounts to CHF/EUR/USD 30,000.

The contributed assets become the assets of the foundation, which are solely liable for any liabilities of the Liechtenstein foundation.

#### **5. Company name**

The Liechtenstein foundation can choose the company's name freely in any language and can use imaginative names. Special permission must be obtained if one is intending to use national and international state or place names in a company name.

#### **6. Organisation**

##### *6.1. Governing bodies*

The supreme authority of the Liechtenstein foundation is the foundation council. It manages the foundation in Liechtenstein and represents it in any legal relations. At least one member of the foundation council must have his law office address in Liechtenstein and be in possession of certain professional qualifications. In addition to this Liechtenstein administrative body, any number of natural or juridical persons, resident in Liechtenstein or abroad, may be co-opted.

##### *6.2. Auditors or control agency*

It is mandatory that registered Liechtenstein foundations that are engaged in commercial activities appoint auditors. Trustees, trust companies with a trustee concession, auditing firms and chartered accountants can act as auditors.

##### *6.3. Founder*

The founder of a Liechtenstein foundation has to determine the purpose of the foundation at least as an outline and establish the group of beneficiaries in the foundation documents.

##### *6.4. Representative*

The representative of a Liechtenstein foundation acts as the official postal addressee of the company and as a connecting link with the authorities.

##### *6.5. Beneficiaries*

The rights of the beneficiary of the Liechtenstein foundation are regulated in the articles of association and by-laws. The founder himself can be beneficiary. The beneficial interest can be tied to certain conditions, time limits and prerequisites. Likewise, the beneficial interest can be annulled through an amendment of the articles at a later time, if this option is provided by the foundation articles. As a general principle, the executive bodies have to follow the wishes of the founder. In the event that no beneficiaries have been designated, the legal assumption applies that the

founder himself is the beneficiary. In this case, succession shall be by inheritance. However, since the beneficial interest is usually designated to a person, the designated subsequent beneficiaries inherit the beneficial interest, not the heirs of the deceased beneficiary. If the beneficial interest is to be hereditary, it has to be expressly provided for in the foundation documents. If the bequeather had been beneficiary only in life, then his claim to beneficial interest does not come under his estate in the first place, because the claim expires with his death.

In the context of the issue of claims, a differentiation is made between beneficiaries of the beneficial interest, beneficiaries of prospective entitlements, discretionary beneficiaries and ultimate beneficiaries.

#### *6.5.1. Beneficiaries of the beneficial interest*

The foundation documents of the Liechtenstein foundation grant the beneficiaries of the beneficial interest a legal claim to a benefit from the foundation's assets or gains in an amount that has been determined or is determinable.

#### *6.5.2. Beneficiaries of prospective entitlements*

Beneficiaries of prospective entitlements of the Liechtenstein foundation have a legal claim, fixed in the foundation documents, to a succession in the entitlement to the beneficial interest at a later point in time. Claimants who are not entitled to a right of succession in the entitlement to the beneficial interest but, instead, only to an uncertain promise of attainment are not beneficiaries of prospective entitlements. Whether a legal claim is in place has to be determined by the interpretation of the foundation documents.

#### *6.5.3. Discretionary beneficiaries*

The discretionary beneficiaries of the Liechtenstein foundation belong to the group of beneficiaries designated by the founder. Their possible benefit interest is at the discretion of the foundation council or another body. Discretionary beneficiaries have no actionable claim to the receipt of a certain advantage from the foundation. They obtain a legal claim only once a valid resolution on the precise form of the distribution has been enacted.

#### *6.5.4. Ultimate beneficiaries*

The ultimate beneficiaries of the Liechtenstein foundation are to receive the remaining assets of the foundation, in accordance with the foundation documents, after its liquidation.

## **7. Founder's rights**

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Under certain conditions, the founder can revoke the foundation or change the foundation documents after the formation and registration of the Liechtenstein foundation. These rights may be exercised by the settlor in relation to third parties. The foundation rights can be neither transferred nor bequeathed.

## **8. Liquidation**

The deregistration of a registered foundation in Liechtenstein, can be effected within a few days given that the liquidation process has been concluded.

## **II. Fiscal structure of the foundation**

Liechtenstein foundations are subject to an annual income tax, amounting to 12.5% of the taxable net income, at a minimum however of CHF 1,200. Liechtenstein foundations that were granted the status as private wealth structure (Privatvermögensstruktur, PVS), provided by the tax law that took effect on 1 January 2011 in Liechtenstein, are taxed only with the minimum income tax of CHF 1,200 annually.

The PVS tax status is usually granted to companies that are not commercially active.

## **III. Effective structure of the foundation**

The Liechtenstein foundation is suitable for the safekeeping of assets and their transfer to heirs. It may be used solely as a private- benefit (family-) foundation, as a non-profit foundation, as an ecclesiastical foundation and as a pure maintenance foundation.

## **IV. Private- Benefit (Family-) Foundation**

### **1. Concept**

The private-benefit foundation in Liechtenstein is a juridical person that uses dedicated assets for the support of a particular family or a particular group of people.

The private-benefit Liechtenstein foundation can be used as a “pure” family foundation for the purpose of managing and safekeeping family and company assets on an international basis; for protecting the family and the assets on a long-term basis and for optimising asset contributions across borders, especially with internationally ramified family structures.

### **2. Private-benefit (Family-) foundation in Liechtenstein as an instrument of estate planning**

The creation of a Liechtenstein family foundation can be a suitable instrument of estate planning. “Estate planning” refers to the comprehensive planning of the transfer of assets from one person to the next generation. Owing to the freedom of design in the context of the formation of a

Liechtenstein family foundation, the founder has the possibility to bind his descendants to certain conditions across several generations.

The formation of a Liechtenstein family foundation should be taken into consideration in particular for cases in which an entrepreneur wishes to supply his immediate family from the company's assets after his death but does not want them entrusted with the managing of the company's business.

The advantage of transferring one's assets to the next generation by means of a Liechtenstein family foundation, instead of a donation or legacy, consists mainly in the fact that a split-up of the family assets is precluded. This is true in particular because the possibility, provided in favour of the founder's heirs, to contest asset contributions to the Liechtenstein foundation is usually restricted, even if a reduction of the statutory share is given, by the amendment to the Liechtenstein Act on International Private Law (IPRG).

This regulation contains the provision that the question whether the mandatory heir (person entitled to a statutory share) can raise claims against third parties who had been given assets by the bequeather in his lifetime has to be judged by law of the state competent for the legal succession as a result of death. Furthermore, it is requisite that the mandatory heir is entitled to such claims under the law that applies to the process of acquisition.

If the law does not provide a legal claim against third parties for mandatory heirs in terms of either one of the aforementioned provisions, there is no legal claim against the Liechtenstein foundation in terms of the asset contributions that have been made.

In addition, a shorter period of two years applies for Liechtenstein foundations regarding the contesting of asset contributions to the foundation.

### **III. Advantages in terms of the formation of a private-benefit foundation in Liechtenstein**

#### **1. Tax exemption**

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Neither the dedication of assets to the foundation nor the distribution to the beneficiaries or the profit made is subject to any further taxation in Liechtenstein. The capital tax was abolished through the Liechtenstein tax reform.

Moreover, both inheritance tax and gift tax have been abolished in Liechtenstein, because inherited or bestowed assets have already been taxed.

#### **2. Other advantages of a private-benefit Liechtenstein foundation**

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The family foundations created under Liechtenstein law also allow one to benefit oneself or to benefit family members as well as to separate assets from their actual owner and thus to anonymise them. When crafting the articles of association, the founder has many options.

Private-benefit Liechtenstein foundations are not subject to external supervision and do not have to be entered into the Commercial Registry (Public Registry). Moreover, there is no obligation to deposit the foundation deed. A formation notification to the Registry of Deeds and Public Registry suffices. The name of the founder and the object of the foundation must be disclosed only to the Liechtenstein attorney and trustee. There is also no obligation to disclose the beneficiaries to the Liechtenstein authorities.

Moreover, the formation of a Liechtenstein foundation lasts only a couple of days. Unlike foundations in most other countries, a Liechtenstein foundation can be dissolved by the founder at any time.

The formation of foundations without preconditions is also allowed in Liechtenstein.

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# Holding in Liechtenstein

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## I. Concept of the holding

The term holding describes the umbrella organisation of a company. It is less a distinct legal form but rather the organisational form of the parent company with its associated companies.

## II. Holding company in Liechtenstein

A Liechtenstein holding company is a juridical person domiciled in Liechtenstein, whose purpose is exclusively or predominantly in the area of the holding and management of investments. Thus the activities of a Liechtenstein holding company may include, among others: capital investments of all kinds, holding of investments (parent function), holding of intellectual property rights (IP), holding of real estate properties, objects of art and suchlike. In Liechtenstein practice, the foundation, the establishment as well as the trust enterprise are especially suitable to the assumption of holding functions.

## III. Forms of holding companies

The organisational combination of investments in holding companies can serve various purposes. In terms of the function assumed by the holding company in Liechtenstein, the individual forms of holdings are differentiated.

### 1. Operative holding or parent company as holding company

The operative holding is the traditional organisational form of large concerns. The parent company itself conducts essential activities necessary for the service rendering process, i.e. it is active directly on the market and thus is active operatively. As a supplement or for support, subsidiaries are founded or purchased, e.g. foreign branches. The corporate head office exerts a strong influence on the subsidiaries.

### 2. Management holding or strategy holding

The management holding, by contrast, conducts no proprietary operative business. Other than the financial holding, the management holding not only has investments in the subsidiaries but manages them as well. These management tasks typically include the determination of strategic

business areas, strategic steering, manning of executive positions and the control of the capital flow within the group.

### 3. Financial holding or asset holding

The financial holding is the counterpart of the operative holding. It manages primarily the assets of the entire group and does not carry out the operative or strategic management of its subsidiaries.

### 4. Organisational or structural holding

In the case of the organisational holding, the holding company is used, alongside company take-overs and start-ups, for purposes of internal organisation as well.

## **IV. Advantages in terms of the founding of a holding company in Liechtenstein**

### 1. Tax advantages in Liechtenstein

The new Liechtenstein tax law that became effective as at 1 January 2011 contains many changes in the area of business taxes. The advantages in terms of the founding of a holding company in Liechtenstein are described below.

#### *1.1. Participation deduction*

Liechtenstein's legislators have allowed a complete participation deduction, independent of the amount and holding period of the participation. Pure participation proceeds are not taxed. Therefore dividends as well as capital gains from the sale of investments in domestic or foreign juridical persons are exempt from taxation in Liechtenstein.

#### *1.2. Income tax flat rate*

Active income in holding companies is taxed by the proportional tax rate of 12.5%, at least however with CHF 1,200 annually. Taxation is limited to the taxable net income. The net income under commercial law is to be reduced by earnings from foreign permanent operations, rental profits from foreign real estate, dividends, capital gains as well as the so-called equity return deduction of presently 4% on modified equity. This equity return deduction reduces the taxable base and lowers the effective tax rate.

A three-year transition period, as of 1 January 2011, applies to all domicile and holding companies existent as at 31 December 2010. During this transition period, they are subject only to the minimum income tax of CHF 1,200 annually.

### *1.3. Tax exemption*

The capital tax was abolished through the Liechtenstein tax reform. The distribution surcharge as part of the income tax and the coupon tax is also omitted.

Old reserves existing as at 31 December 2010 do not fall under the abolition of the coupon tax. Within the first two years, until 31 December 2012, the old reserves can be distributed at a lower tax rate of 2% or carried forward. As of 2013, the tax on old reserves not settled will be 4% again.

### *1.4. Group taxation and unlimited loss carried forward*

With regard to group taxation, the losses arising within one year can be offset by gains in the same year from other domestic and foreign group companies. The prerequisite, however, is that the applicant juridical person is subject to unlimited taxation at home and holds a controlling interest in domestic or foreign juridical persons. For juridical persons with limited tax liability, it is possible under the condition that the investments can be allocated to a branch in Liechtenstein. If interests are not 100% controlling, a pro-rata loss allocation is allowed. The right to group taxation, however, is given upon application.

The loss carried forward is unlimited in time in Liechtenstein. The consequence is that losses can be offset by later taxable gains for an unlimited period of time.

### *1.5. Privileged taxation of income from intellectual property rights*

The new Liechtenstein tax law has fixed the privileged taxation of intellectual property rights (IP). With the aid of the so-called Intellectual Property Box (IP-Box), 80% of the proceeds from intellectual property rights, created or acquired as of 1 January 2011, are exempt from taxation. Patents, brands, models and registered designs are considered intellectual property rights in Liechtenstein, provided that they are protected by entry into a domestic, foreign or international registry. Other rights, such as copyrights, know-how or trade relationships, are not considered intellectual property rights; therefore they do not enjoy privileged treatment in Liechtenstein.

### *1.6. Privileged taxing of companies with the tax status of a personal wealth structure (PVS, Privatvermögensstruktur)*

For juridical persons whose sole purpose rests in asset management and that are not active commercially, the legislator in Liechtenstein has intended new tax privileges that are entailed in their qualification as personal wealth structure (PVS). Companies with PVS tax status are allowed to acquire assets, own them, manage and dispose of them. This activity is limited to the passive attainment of income from the assets, excluding any form of commercial trading. A PVS is allowed to hold investments in other companies only if it does not exert any real influence on the management of the affiliate. In addition, the owner of a PVS is not allowed to be an entrepreneur himself. Rather, he has to be a natural person, a company with PVS tax status or a person who acts as intermediary for account of these two groups.

The PVS is only subject to the minimum income tax of CHF1,200. Beyond that, no income tax is levied.

## **2. Asset protection by dint of a Liechtenstein holding**

If assets that are intended exclusively for personal purposes are held by Liechtenstein holding companies, which as a rule are Liechtenstein foundations, these assets are not at risk if losses and liabilities are created over the course of business activities conducted by the beneficiary.

## **3. Other advantages of Liechtenstein**

Provided that the business premises are within the EU, the EU freedom of establishment applies and thus the legal protection of the EU.

Moreover, exchange of shares as well as partner borrowing are possible in Liechtenstein. Hence a tax-neutral transfer of the subsidiaries' assets to the holding can be effected. The shares do not have to be valued nor purchased in the process.

In addition, Liechtenstein has excellent bank secrecy.

## **V. Formation of a holding in Liechtenstein**

With regard to the formation of a Liechtenstein holding, a differentiation is made between the founding model, the contribution model and the divestment model.

### **1. Founding model**

The formation of a Liechtenstein holding can be effected through the founding and acquisition of investments, through payment of the cash contribution by the investors or buyers.

### **2. Contribution model**

Furthermore, the Liechtenstein holding can be formed through founding and contribution of existing investments. Here the investment becomes a contribution in kind.

### **3. Divestment model**

Finally, the Liechtenstein holding can be formed through divestment and the transfer of assets to new subsidiaries.

## **VI. Prevention of illegal intermediate companies in Liechtenstein**

To achieve tax advantages, intermediate companies (intermediate holdings) are often formed with the founding of a holding in Liechtenstein. The impression of an illegal intermediate company

must be prevented in this context. This impression arises in the case of pure letter box companies without sufficient tax basis in Liechtenstein; or when it is assumed that the company is operated by remote control from abroad.

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# Trading Company in Liechtenstein

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## I. Concept of the trading company in Liechtenstein

Liechtenstein trading companies are the companies with legal personality and equivalent legal entities (juridical persons) as well as the companies without legal personality with firms.

### 1. Companies with legal personality or legal entities (juridical persons)

Pursuant to the Liechtenstein Persons and Companies Law (PGR, Personen- und Gesellschaftsrecht), legal entities are corporately organised associations of persons and dedications of assets. On the one hand, it covers bodies under private law, i.e. the registered association in Liechtenstein and capital companies such as the Liechtenstein public limited company (PLC., Corp.) and limited liability company (LLC., Ltd.). On the other hand, the Liechtenstein establishment, the foundation as well as the trust enterprise (trust reg.) are likewise legal entities in Liechtenstein.

When founding a Liechtenstein legal entity, a sales charge (in the case of the founding of a Liechtenstein public limited company [PLC., Corp.] or limited liability company [LLC., Ltd.]) or formation tax (in the case of the founding of a Liechtenstein establishment or trust enterprise [trust reg.]) incur if their capital exceeds the amount of CHF 1 million. The tax rate is 1% of the capital exceeding the amount of CHF 1 million. This tax rate is reduced to 0.5% for the capital exceeding the amount of CHF 5 million; to 0.3% for the capital exceeding CHF 10 million. If the capital is under CHF 1 million, no taxes usually incur with the founding of a juridical person.

### 2. Companies without legal personality

With the exception of the general partnership and limited partnership, including the general partnership with limited liability and the limited partnership that has no absolutely liable partner (Kommanditärengesellschaft), the companies without legal personality have neither legal capacity nor the capacity to sue and be sued. Only the partners, however, can appear in a lawsuit.

The Liechtenstein limited partnership is especially characterised by the fact that it includes partners with limited liability as well as partners with absolute liability. In the case of a general partnership in Liechtenstein, by contrast, all partners are absolutely and jointly liable.

Within the framework of the formation of a company without legal personality, no taxes incur as a rule.

## II. Founding of a trading company in Liechtenstein

The prerequisites for the formation of a Liechtenstein trading company follow the legal form given in each case.

In addition, both natural persons and juridical persons commercially active in Liechtenstein require a trade licence from the Amt für Volkswirtschaft (Office of Economic Affairs). Only those professions are exempt from this that require a licence under another, special law, such as: attorneys at law, physicians, other health professions, asset managers, trustees, architects and engineers. An activity is commercial when it is conducted independently, regularly and with the goal of attaining income or other economic advantages.

Domicile companies, i.e. companies that are only domiciled in Liechtenstein but are not commercially active domestically, are exempt from the requirement to obtain a licence from the Liechtenstein authority.

## III. Advantages in terms of the founding of a trading company in Liechtenstein

### 1. Tax advantages

The new Liechtenstein tax law that came into effect as at 1 January 2011 has created a fiscal law in Liechtenstein that is internationally compatible and conforms to European law. The improvements in the area of the taxation of Liechtenstein companies are described below.

#### 1.1. Income tax flat rate

Active income is taxed in Liechtenstein by the proportional tax rate of 12.5%, at least however with CHF 1,200 annually. Taxation is limited to the taxable net income. The net income under commercial law is to be reduced by earnings from foreign permanent operations, rental profits from foreign real estate, dividends, capital gains as well as the so-called equity return deduction of presently 4% on modified equity. This equity return deduction reduces the taxable base and lowers the effective tax rate.

A three-year transition period, as of 1 January 2011, applies to all domicile and holding companies existent as at 31 December 2010. During this transition period, they are subject only to the minimum income tax of CHF 1,200 annually.

#### 1.2. Tax exemption

Income from the trading with and the keeping of securities is exempt from any taxes in Liechtenstein.

The capital tax was abolished through the Liechtenstein tax reform. Dividends from the interest held in domestic or foreign juridical persons as well as capital gains from the sale of investments in domestic or foreign juridical persons are exempt from taxation in Liechtenstein. Liechtenstein's

legislators have allowed a complete participation deduction, independent of the amount and holding period of the investment.

The distribution surcharge as part of the income tax and the coupon tax is also omitted. Old reserves existing as at 31 December 2010 do not fall under the abolition of the coupon tax. Within the first two years, until 31 December 2012, the old reserves can be distributed at a lower tax rate of 2% or carried forward. As of 2013, the tax on reserves not settled reserves will be 4% again.

### *1.3. Group taxation and unlimited loss carried forward*

With regard to group taxation, the losses arising within one year can be offset by gains in the same year from other domestic and foreign group companies. The prerequisite, however, is that the applicant juridical person is subject to unlimited taxation at home and holds a controlling interest in domestic or foreign juridical persons. For juridical persons with limited tax liability, it is possible under the condition that the investments can be allocated to a branch in Liechtenstein. If interests are not 100% controlling, a pro-rata loss allocation is allowed. The right to group taxation, however, is given upon application.

The loss carried forward is unlimited in time in Liechtenstein. The consequence is that losses can be offset by later taxable gains for an unlimited period of time.

### *1.4. Privileged taxation of income from intellectual property rights*

The new Liechtenstein tax law has fixed the privileged taxation of intellectual property rights (IP). With the aid of the so-called Intellectual Property Box (IP-Box), 80% of the proceeds from intellectual property rights, created or acquired as of 1 January 2011, are exempt from taxation. Patents, brands, models and registered designs are considered intellectual property rights in Liechtenstein, provided that they are protected by entry into a domestic, foreign or international registry. Other rights, such as copyrights, know-how or trade relationships, are not considered intellectual property rights; therefore they do not enjoy privileged treatment in Liechtenstein.

### *1.5. Privileged taxing of companies with the tax status of a personal wealth structure (PVS, Privatvermögensstruktur)*

For juridical persons whose sole purpose rests in asset management and that are not active commercially, the legislator in Liechtenstein has intended new tax privileges that are entailed in their qualification as personal wealth structure (PVS). Companies with PVS tax status are allowed to acquire assets, own them, manage and dispose of them. This activity is limited to the passive attainment of income from the assets, excluding any form of commercial trading. A PVS is allowed to hold investments in other companies only if it does not exert any real influence on the management of the affiliate. In addition, the owner of a PVS is not allowed to be an entrepreneur himself. Rather, he has to be a natural person, a company with PVS tax status or a person who acts as intermediary for account of these two groups.

The PVS is only subject to the minimum income tax of CHF1,200. Beyond that, no income tax is levied.

*1.6. Value added tax*

The general value added tax rate on goods deliveries and services stands at 8.0% in Liechtenstein.

A reduced value added tax rate of 3.8% or 2.5% is applied to certain essential goods.

**2. Other advantages of Liechtenstein**

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Neither an office nor staff have to be kept in Liechtenstein. On account of an agreement, the management of such domiciliary companies can be done by a trustee in Liechtenstein.

Provided that the business premises are within the EU, the EU freedom of establishment applies and thus the legal protection of the EU.

In addition, Liechtenstein has excellent bank secrecy.

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# Asset Management Company in Liechtenstein

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## I. Services of the asset management company

The area of activities of Liechtenstein asset management companies includes the provision or procurement of the following services:

portfolio management; investment advice; acceptance and forwarding of orders referring to one or several financial instruments; securities analysis or financial analysis or other forms of general recommendations referring to transactions with financial instruments that serve direct client support.

## II. Rules of conduct for the asset management company

When providing services, the Liechtenstein asset management company has to comply with statutory rules of good conduct as well as duties of due diligence and allegiance.

## III. Client classification of the asset management company

The Liechtenstein asset management company has to classify each of its clients as non-professional, professional or eligible counterparty so the level of protection can be determined.

Non-professional clients enjoy the highest level of protection. With regard to professional clients or eligible counterparties, the Liechtenstein asset management company may assume that sufficient knowledge and experience is on hand and that the financial investment risk is bearable.

## IV. Formation of an asset management company

### 1. Legal form of the Liechtenstein asset management company

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The Liechtenstein asset management company can have the legal form of a legal entity (juridical person), a general partnership or a limited partnership. Asset management by natural persons (single enterprises), however, is excluded.

### 2. Approval requirement for the Liechtenstein asset management company

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To start operations, an asset management company needs an approval by the Finanzmarktaufsicht Liechtenstein (FMA, Financial Market Authority). It will be granted to the Liechtenstein

company on application for the approval as asset management company if the following prerequisites are met.

### *2.1. Organisational requirements*

The Liechtenstein asset management company has to submit a sustainable business plan including the organisational structure of the company. What is required is a company with registered office and administrative centre in Liechtenstein, business premises that are adequate in terms of staff and space as well as an organisation suitable to the fulfilment of its tasks.

### *2.2. Requirements for the directors (personal and professional qualification)*

The Liechtenstein asset management company requires at least one director. He has to have his residence in Liechtenstein or close to the Liechtenstein border.

### *2.3. Appointment of an auditor*

The Liechtenstein asset management company has to appoint an external auditor who audits the business activities of the asset management company annually. Auditing firms under the law on auditors as well as auditing firms under the banking law or the law on investment companies can act as auditor.

### *2.4. Proof of equity*

The Liechtenstein asset management company has to provide proof of adequate equity funding as well as of equity of a minimum of CHF 100,000.

## **V. Advantages in terms of the establishment of a asset management company**

### **1. Freedom to provide services and freedom of establishment**

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Owing to the fact that Liechtenstein belongs to the EEA, a Liechtenstein asset management company profits from the freedom of establishment owing to its EU passport as well as of the freedom to provide services. Hence the Liechtenstein asset management company is allowed to offer its services in the entire EEA/EU region without having to obtain approval again.

### **2. Easier market entry**

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Since the Liechtenstein asset management company is subject to financial supervision by the Financial Market Authority in Liechtenstein, market entry in third countries has been made easier.

### **3. Contracted brokers**

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As part of their service provision, Liechtenstein asset management companies can use contracted brokers in any EEA country who will render the services on behalf of the Liechtenstein asset management company. Thus expenses for the establishment of branches in other member states can be saved.

### **4. Investor protection in terms of asset management**

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On the one hand, investor interests in terms of asset management are protected in Liechtenstein by the fact that companies that want to offer asset management services are checked in great detail before obtaining the approval of the Liechtenstein Financial Market Authority (FMA). On the other hand, the FMA is obligated to supervise asset management companies in Liechtenstein on a permanent basis, which is ensured by means of controls, legal provisions and reporting obligations. Moreover, explicit investor protection provisions are mandatory under law and have to be complied with by Liechtenstein asset management companies when rendering services. Finally, an arbitration board will be established in Liechtenstein in order to settle disputes between clients and their asset management company in an efficient, cost-efficient and target-oriented way.

### **5. Tax advantages in Liechtenstein**

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The new Liechtenstein tax law that became effective as at 1 January 2011 contains many changes in the area of business taxes. The advantages in terms of the establishment of an asset management company in Liechtenstein are described below.

#### *5.1. Privileged taxing of companies with the tax status of a personal wealth structure (PVS, Privatvermögensstruktur)*

For juridical persons whose sole purpose rests in asset management and that are not active commercially, the legislator in Liechtenstein has intended new tax privileges that are entailed in their qualification as personal wealth structure (PVS). Companies with PVS tax status are allowed to acquire assets, own them, manage and dispose of them. This activity is limited to the passive attainment of income from the assets, excluding any form of commercial trading. A PVS is allowed to hold investments in other companies only if it does not exert any real influence on the management of the affiliate. In addition, the owner of a PVS is not allowed to be an entrepreneur himself. Rather, he has to be a natural person, a company with PVS tax status or a person who acts as intermediary for account of these two groups.

The PVS is only subject to the minimum income tax of CHF1,200. Beyond that, no income tax is levied.

Companies not qualifying as PVS are subject to the income tax of 12.5%.

### *5.2. Tax exemption*

The capital tax was abolished through the Liechtenstein tax reform. The distribution surcharge as part of the income tax and the coupon tax is also omitted.

### *5.3. Participation deduction*

Liechtenstein's legislators have allowed a complete participation deduction, independent of the amount and holding period of the participation. Pure participation proceeds are not taxed. Therefore dividends as well as capital gains from the sale of investments in domestic or foreign juridical persons are exempt from taxation in Liechtenstein.

### *5.4. Group taxation and unlimited loss carried forward*

Liechtenstein now allows for a loss carried forward that is unlimited in time, meaning that losses can be offset by later taxable gains for an unlimited period of time.

With regard to losses carried forward, a group taxation for domestic and foreign companies associated with the group was introduced, which makes it possible to offset losses within a Liechtenstein group worldwide within the same period.

### *5.5. Privileged taxation of income from intellectual property rights (IP)*

The new Liechtenstein tax law has fixed the privileged taxation of intellectual property rights (IP). With the aid of the so-called Intellectual Property Box (IP-Box), 80% of the proceeds from intellectual property rights, created or acquired as of 1 January 2011, are exempt from taxation. Patents, brands, models and registered designs are considered intellectual property rights in Liechtenstein, provided that they are protected by entry into a domestic, foreign or international registry. Other rights, such as copyrights, know-how or trade relationships, are not considered intellectual property rights; therefore they do not enjoy privileged treatment in Liechtenstein.

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# Intellectual Property Box (IP-box) Liechtenstein

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## I. Intellectual Property Box (IP box) in Liechtenstein

The tax law that became effective as at 1 January 2011 also had the purpose of strengthening Liechtenstein as a research and development centre. An internationally acknowledged and already widespread instrument for the fiscal promotion of research and development are the so-called IP box systems. They entail the privileged taxation of income from intellectual property rights (IP). Such an IP box system was introduced in Liechtenstein with the new Liechtenstein tax law. The law provides a special deduction for income from intellectual property rights.

## II. Intellectual property rights (IP) in Liechtenstein

Patents, brands, models and registered designs are considered intellectual property rights in the meaning of this Liechtenstein IP deduction, provided that they are protected by entry into a domestic (Liechtenstein), foreign or international registry and have been created or acquired as of 1 January 2011. Authoritative for this is the entry into the Commercial Registry, whose existence has to be proven by the person paying the tax. The deduction is not possible if a priority claim before 1 January 2011 is on hand.

Other rights, such as copyrights, know-how or trade relationships are not considered intellectual property rights in the meaning of the Liechtenstein special deduction; therefore they do not enjoy privileged treatment in Liechtenstein.

## III. IP company in Liechtenstein

Intellectual property rights (IP) increasingly constitute a vital factor of success in international competition. The value of intellectual property rights (IP) can be additionally enhanced by dint of a tax-efficient structure. Since intellectual property rights (IP) are not tied to a definite location, they can, in principle, be relatively easily transferred to an IP company. The IP companies are subsidiaries that have been established especially in a country with an advantageous tax system such as Liechtenstein; they concentrate the IP of the company. In addition, the IP company is responsible for the establishment or advancement, protection, management and exploitation of intellectual property rights (IP), subsequently licensing them to group subsidiaries or third parties.

This way, the Liechtenstein IP company can generate gains in Liechtenstein by means of the intellectual property rights assigned to it, profiting from the privileged taxation.

In order to realise tax minimisations for proceeds from the use and exploitation of proprietary or third-party intellectual property rights (IP), a number of business models have developed

over the course of the years that draw upon the use of IP companies. Thus the organisation and administration of the intellectual property rights can be ensured through a Liechtenstein IP holding company belonging to the group.

Intermediate companies (intermediate holdings) are often formed with the founding of such an IP holding company in Liechtenstein. The impression of an illegal intermediate company must be prevented in this context. This impression arises in the case of pure letter box companies without sufficient tax basis in Liechtenstein; or when it is assumed that the company is operated by remote control from abroad.

## IV. Advantages of an IP company in Liechtenstein

### 1. Privileged taxation of income from intellectual property rights (IP)

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#### 1.1. *Income tax flat rate*

Active income is taxed in Liechtenstein by the proportional tax rate of 12.5%, at least however with CHF 1,200 annually. Taxation is limited to the taxable net income. The net income under commercial law has to be reduced, among other things, by the so-called equity return deduction of currently 4% on the modified equity. This equity return deduction reduces the taxable base and lowers the effective tax rate.

#### 1.2. *Tax shelter in Liechtenstein for income from intellectual property rights (IP)*

With the aid of the so-called Intellectual Property Box (IP-Box), 80% of the proceeds from intellectual property rights, created or acquired as of 1 January 2011, are exempt from taxation, since they are declared as business-related expenses. Positive income from intellectual property rights, after being offset by the corresponding expenditures, are taxed by merely 2.5% (instead of 12.5%) income tax.

#### 1.3. *Assessment basis for the Liechtenstein special deduction*

The assessment basis for the Liechtenstein special deduction of 80% are the proceeds from the use, exploitation or disposal of intellectual property rights (IP) minus the tax-relevant expenditures entailed therein. Write-offs on intellectual property rights are even effective when the expenditures have accrued across several assessment periods.

If intellectual property rights (IP) are used by a juridical person or operation itself within the scope of their production or by third parties who act as contractors for it or are used within the scope of services, the deduction is to be applied to such proceeds from intellectual property rights that would have been achieved with a surrender of use to third parties for payment. If remunerations for intellectual property rights have been agreed that are above the compensations usual on the market, the Liechtenstein 80% special deduction is calculated on the basis of the price usual on the market (arm's length principle).

## 2. Other fiscal benefits

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### 2.1. Tax exemption

The capital tax was abolished through the Liechtenstein tax reform.

The distribution surcharge as part of the income tax and the coupon tax is also omitted. Old reserves existing as at 31 December 2010 do not fall under the abolition of the coupon tax. Within the first two years, until 31 December 2012, the old reserves can be distributed at a lower tax rate of 2% or carried forward. As of 2013, the tax on reserves not settled reserves will be 4% again.

In addition, there's no withholding tax in Liechtenstein on interest, dividends or licence fees flowing from Liechtenstein.

### 2.2. Participation deduction

Liechtenstein's legislators have allowed a complete participation deduction, independent of the amount and holding period of the participation. Pure participation proceeds (holding companies) are not taxed. Therefore dividends as well as capital gains from the sale of investments in domestic or foreign juridical persons are exempt from taxation in Liechtenstein.

### 2.3. Group taxation and unlimited loss carried forward

Liechtenstein now allows for a loss carried forward that is unlimited in time, meaning that losses can be offset by later taxable gains for an unlimited period of time.

With regard to losses carried forward, a group taxation for domestic and foreign companies associated with the group was introduced, which makes it possible to offset losses within a Liechtenstein group worldwide within the same period.

### 2.4. Privileged taxing of companies with the tax status of a personal wealth structure (PVS, Privatvermögensstruktur)

For juridical persons whose sole purpose rests in asset management and that are not active commercially, the legislator in Liechtenstein has intended new tax privileges that are entailed in their qualification as personal wealth structure (PVS). Companies with PVS tax status are allowed to acquire assets, own them, manage and dispose of them. This activity is limited to the passive attainment of income from the assets, excluding any form of commercial trading. A PVS is allowed to hold investments in other companies only if it does not exert any real influence on the management of the affiliate. In addition, the owner of a PVS is not allowed to be an entrepreneur himself. Rather, he has to be a natural person, a company with PVS tax status or a person who acts as intermediary for account of these two groups.

The PVS is only subject to the minimum income tax of CHF1,200. Beyond that, no income tax is levied.

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# Funds in Liechtenstein

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## I. Legal framework in Liechtenstein

With the Europe-wide coordination of the European investment fund regulations through the UCITS-IV (undertakings for the collective investment in transferable securities) Directive as well as the AIFM (alternative investment fund managers) Directive and the complete regulatory revision entailed therein, a second legal foundation for fund transactions in Liechtenstein was created alongside the law on certain undertakings for the collective investment in securities (UCITSG), namely the law on alternative investment fund managers (AIFMG). The implementation of these Directives pursues the goal of making the fund centre Liechtenstein more attractive for both undertakings for the collective investment in securities (UCITS) and alternative investment funds (AIF), especially with regard to foreign fund initiators and their managers, in order to ensure a long-term growth of the fund and banking centre of Liechtenstein.

In contrast to the classification of the previous investment company law (Investmentunternehmensgesetz, IUG) into investment companies for securities, for other values, for real estate and, in addition, the special type of investment company for qualified investors, the new law differentiates, in compliance with the European regulations, only between undertakings for the collective investment in securities (UCITS) and alternative investment funds (AIF).

### 1. UCITS

UCITS are regulated in the law on certain undertakings for the collective investment in securities (UCITSG) that took effect in Liechtenstein on 1 August 2011 and contains provisions with regard to the approval, supervision and investment activity of UCITS and their management companies. The UCITSG applies to all UCITS that have been founded in Liechtenstein or are offered to the public in or from Liechtenstein.

### 2. IUG

The provisions of the Liechtenstein IUG regarding investment companies for other values, for real estate as well as for qualified investors apply until the implementation of the AIFM Directive through the law on alternative investment fund managers (AIFMG). The AIFMG will probably take effect in Liechtenstein on 22 July 2013.

The implementation of the AIFM Directive in Liechtenstein brings about a complete revision of the IUG. The AIFMG entails major changes in the business with alternative investment funds (AIF). The managers of alternative investment funds (AIFM) who conduct the portfolio management and risk management for AIF, i.e. all funds that are not UCITS and thus not regulated by the UCITSG, will be regulated on a European basis for the first time. The AIFMG allows for a flexible

arrangement of AIF: on the one hand, it provides a choice of legal forms; on the other, it contains precisely regulated standards for structural measures and transfers of registered offices that rely on a high degree of flexibility. In conformance with the European requirements, the AIFMG for the ensuring of international competitiveness and the uniform protection of shareholders/investors—alongside the introduction of the EU passport for funds and AIFM—makes greater personal and organisational demands on managers, business partners, custodians and the Financial Market Authority (FMA).

### *2.1. Possible legal forms of a company according to the AIFMG*

Beside the legal forms approved in the UCISTG, the structures of an investment limited partnership under Liechtenstein law, where only one partner is absolutely liable and that has a similar structure to the Luxembourgian SICAR (Anlagekommanditgesellschaft), as well as the investment limited partnership under Liechtenstein law that has no absolutely liable partner (Anlagekommanditärengesellschaft), are possible under the AIFMG.

### *2.2. Application for a licence*

The AIFMG rules that the AIFMs are subject to a disclosure duty and are obligated to obtain an FMA licence. In order to obtain a licence as AIFM, either the portfolio management or the risk management has to be provided by the AIFM in Liechtenstein.

### *2.3. Minimum capital of the Liechtenstein AIF*

For self-managed Liechtenstein AIF, an opening capital of at least EUR 300,000 (or the equivalent in CHF) is required; for a Liechtenstein AIF that is managed by an AIFM, an opening capital of at least EUR 125,000 (or the equivalent in CHF) is required.

## **II. Fund types in Liechtenstein**

### **1. UCITS**

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#### *1.1. Concept of the Liechtenstein UCITS fund or investment company for securities*

Investment funds that contain, alongside securities such as stocks or bonds, also other financial products, e.g. derivatives, are called Liechtenstein UCITS funds. Funds of that type are characterised by the fact that they have the EU passport and are allowed to be sold publicly in the entire EEA region only with a licence from the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein (single licence principle). Pursuant to the UCITSG, the cross-border management of funds, the merger of funds as well as the establishment of so-called master feeder structures, which entails the pooling of the assets of one or several feeder funds into a common master fund.

## *1.2. Legal forms of a Liechtenstein UCITS fund*

A Liechtenstein UCITS fund can have the following legal forms:

### *1.2.1. Investment fund (contractual investment fund)*

The Liechtenstein investment fund describes a legal relationship, established by a contract whose contents are identical, of several investors to a management company and to a custodian for the purpose of capital investment, the management and safeguarding of assets on behalf of the investors in the form of a legally separate fund in which the investors participate. Investment funds do not have a legal personality and are to be entered into the Liechtenstein Commercial Registry (Public Registry) subsequent to having been approved by the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein. The fund contract that requires approval as well, however, does not have to be entered into the Commercial Registry.

### *1.2.2. Collective trust*

The Liechtenstein collective trust entails the conclusion of a trusteeship, identical in terms of content, with an indeterminate number of investors for the investment and management of assets on behalf of the investors; the individual investors invest only on a pro-rata basis and are personally liable only up to the amount of the investment sum. Collective trusts do not have a legal personality and are to be entered into the Liechtenstein Commercial Registry (Public Registry) subsequent to having been approved by the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein. The trust contract that requires approval by the FMA as well, however, does not have to be entered into the Commercial Registry.

### *1.2.3. Investment company*

A Liechtenstein investment company, whose only purpose is the investment and management of assets on behalf of the investors, can be an UCITS fund in the form of a public limited company (PLC., Corp.), of a public EU company (SE) or of an establishment and can be capitalised with variable (SICAV) or fixed (SICAF) capital. The Liechtenstein investment company can be managed by its own bodies or by an external management agency. Unlike the investment fund and the collective trust, a Liechtenstein investment company is created only upon entry into the Commercial Registry.

## *1.3. Approval of the UCITS fund*

Every Liechtenstein UCITS fund domiciled in Liechtenstein has to have the approval of the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein. The approval by the FMA is valid in all other EEA member states. Moreover, every Liechtenstein UCITS fund, with the exception of self-managed investment companies, requires a management company. The management company has to apply for a licence with the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein.

#### *1.4. Minimum capital of the UCITS fund*

The minimum capital of a self-managed Liechtenstein investment company has to amount to EUR 300,000 (or the equivalent in other currencies). With regard to an externally managed Liechtenstein investment company as well as a management company, EUR 125,000 (or the equivalent in other currencies) is required.

#### *1.5. Safekeeping of the UCITS fund*

Liechtenstein UCITS are to be transferred to a custodian for safekeeping; the custodian can be a bank or securities company; the domestic branch of a bank or securities company domiciled in the EEA; or another person with residency or registered office in Liechtenstein under the supervision of FMA. Here the reservation applies that the tasks of the custodian and the management company or the self-managed investment company may not be executed by one and the same company.

## **2. Non-UCITS products**

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The IUG (law on investment companies) presently applies to all non-UCITS products.

#### *2.1. Investment companies for other values*

This fund type includes Liechtenstein investment companies that are neither investment companies for securities nor investment companies for real estate. Funds for other values are investments that are marketable only to a limited extent, are subject to strong price fluctuations, show a limited risk spread or whose valuation is difficult. Investments in rare earths, mass-produced goods and derivative financial instruments in particular are allowed. The minimum fund volume amounts to CHF 2 million (or the equivalent in other currencies); it has to be achieved at the latest 6 months after the first subscription and may not fall short of this sum afterwards. There are only a few restrictions in place for this fund type, so that investments can be realised that would not be possible under the UCITSG on account of the comparatively strict diversification regulations and upper investment limits for securities funds.

#### *2.2. Investment companies for other values with heightened risk*

Such funds show an even higher risk profile in comparison to the normal funds for other values. In addition, borrowing, derivatives for speculation purposes and short selling, for instance, are allowed. The requirements for risk controlling are high for these funds; the risk controlling is audited by the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein at regular intervals. The minimum fund volume also amounts to CHF 2 million (or the equivalent in other currencies); it has to be achieved at the latest 6 months after the first subscription and may not fall short of this sum afterwards.

#### *2.3. Investment fund for qualified investors*

With the investment fund for qualified investors, Liechtenstein has created facilities for the struc-

turing of wealth. This fund is subject to special restrictions in terms of the qualification of the investors; however, owing to low publicity regulations and simplified authorisation provisions, it can be launched very quickly. One can assume with a qualified investor that, on account of his experience, the legal form, assets and investment volume, he is aware of specific risks and has only a limited need of protection; hence this fund is exempt from certain provisions of the law on investment companies (IUG) and the ordinance on investment companies (IUV). The launch of this Liechtenstein fund type, for instance, does not require the prior material authorisation by the Liechtenstein Finanzmarktaufsicht (FMA, Financial Market Authority). Qualified investors include, for instance, banks, insurance companies, retirement funds, asset managers, funds, other companies and Family Offices. The minimum fund volume amounts to CHF 2 million (or the equivalent in other currencies); it has to be achieved at the latest 6 months after the first subscription and may not fall short of this sum afterwards.

#### *2.4. Investment companies for real estate*

In compliance with the principle of risk spread, investments can be made in private or commercial properties with this fund. The minimum fund volume amounts to CHF 2 million (or the equivalent in other currencies); it has to be achieved at the latest 6 months after the first subscription and may not fall short of this sum afterwards.

### **III. Advantages of the Liechtenstein fund centre**

#### **1. Tax benefits in terms of the taxation of investment companies**

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##### *1.1. Income tax flat rate*

Investment companies with registered office or their actual administrative location in Liechtenstein are subject to unlimited income tax with their entire company income in Liechtenstein. All Liechtenstein investment companies are correspondingly subject to income taxes. The income tax amounts to 12.5%, at least however CHF1,200 annually. Taxation is limited to the taxable net income. The net income under commercial law has to be reduced, among other things, by the so-called equity return deduction of currently 4% on the modified equity. This equity return deduction reduces the taxable base and lowers the effective tax rate. What has to be taken into account here is that dividends from the investment in juridical persons as well as capital gains from the sale or liquidation of investments in juridical persons are exempt from Liechtenstein income tax. The proceeds from the managed assets, by contrast, are non-taxable income.

##### *1.2. Sales charge and property fee*

On the basis of the custom union agreement as well as the import law in the wake of the agreement, the Swiss federal law is applicable in Liechtenstein and the Swiss stamp duty also applies in Liechtenstein. Therefore the sales charge has to be kept in mind in the context of the Liechtenstein investment companies.

Liechtenstein funds are considered investors that are exempt from the stamp duty. Hence the stamp duty ascribed to the fund is dispensed with when domestic securities are bought or sold by a Liechtenstein fund. Provided that the Swiss regulations on the stamp duty are not applicable, the formation tax is levied according to Liechtenstein law.

#### *1.2.1. Investment fund (contractual investment fund)*

With regard to Liechtenstein investment companies with the legal form of an investment fund, a differentiation in terms of the sales charge has to be made between the shares in the fund management (management company) and the shares in the managed assets.

If the management company is a Liechtenstein public limited company (PLC., Corp.) or public EU company (SE), the issuance or increase of the nominal value of the shares in Liechtenstein is subject to a 1% sales charge, provided that the equivalent exceeds CHF 1 million. If the management company is organised in the legal form of a Liechtenstein establishment, the formation tax amounts to 1%, if the equivalent exceeds CHF 1 million. The formation tax is reduced to 0.5% for the capital exceeding the amount of CHF 5 million; to 0.3% for the capital exceeding CHF 10 million.

The creation of shares in the managed assets, in contrast, does not prompt a sales charge or formation tax.

#### *1.2.2. Investment company (investment company with variable capital)*

In the case of the investment company with variable capital, the shares in the nominal capital and the shares in the managed assets are not subject to sales charge or formation tax.

#### *1.2.3. Investment company (investment company with fixed capital)*

In the case of the investment company with fixed capital, the issuance or increase of the nominal value of the shares are subject to a 1% sales charge provided that the equivalent exceeds CHF 1 million.

### *1.3. Turnover tax*

The transfer of property in shares of the managed fund against payment is subject to the Liechtenstein turnover tax provided that a party or broker is a domestic securities dealer. The redemption and issuance of Liechtenstein fund shares are exempt from the turnover tax.

### *1.4. Tax exemption*

The property tax was abolished through the Liechtenstein tax law coming into effect on 1 January 2011. The coupon tax is also omitted. Old reserves existing as at 31 December 2010 do not fall under the abolition of the coupon tax. Within the first two years, until 31 December 2012, the old reserves can be distributed at a lower tax rate of 2% or carried forward. As of 2013, the tax on old reserves not settled will be 4% again.

### *1.5. Privileged taxing of companies with the tax status of a personal wealth structure (PVS, Privatvermögensstruktur)*

Liechtenstein juridical persons that hold fund shares can also refer to the tax privileges entailed in their qualification as personal wealth structure (PVS). The PVS is only subject to the minimum income tax of CHF1,200. Beyond that, no income tax is levied.

## **2. Easy access to European markets**

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Under certain conditions, membership in the European Economic Area (EEA) facilitates an easy access to the European market that is free from discrimination for both Liechtenstein fund management companies and UCITS- and AIF-compliant investment funds.

## **3. Swift licensing process**

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The coordination between Liechtenstein's financial institutions and authorities is excellent. Especially the binding time allowance for the approval of new funds established by the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein guarantees a swift licensing process.

## **4. Investor protection**

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The fund centre and financial centre of Liechtenstein is subject to a modern and Europe-compliant legislation and independent supervision. The protection of investors is anchored in the Liechtenstein fund law and is continually ensured by the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein as well as by independent auditors, who likewise have to have the approval of the FMA. In compliance with laws and directives, the FMA has established good behaviour rules for the Liechtenstein fund centre that contribute to the protection of investors and ensure and advance the trust in the Liechtenstein fund centre and the Liechtenstein finance sector (market integrity).

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# Family Office in Liechtenstein

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## I. The term Family Office

The term Family Office originates in the Anglo-Saxon region, designating organisational forms and services with regard to the management of large volume private assets and the services entailed therein.

Organisational forms are so-called “multi” Family Offices or “institutional” Family Offices, which take care of several families and are often companies or departments of banks as well as so-called “single” Family Offices or “private” Family Offices, which manage the assets of a single family. This structure entails a company founded by the asset owner(s), most often with the legal form of a limited liability company (LLC., Ltd.) or a public limited company (PLC., Corp.). Owing to the expenditure entailed in the creation and operation, this variant of the Family Office makes sense only for very large assets, however.

## II. Purpose of the Family Office

A Family Office has the purpose of the optimal management of private and corporate assets. The focus is less on an augmentation of the family assets but rather on its long-term preservation.

## III. Services of the Family Office in Liechtenstein

The areas of activities of Liechtenstein Family Offices include the provision or procurement of the following services:

portfolio management; investment advice; acceptance and forwarding of orders referring to one or several financial instruments; securities analysis and financial analysis or other forms of general recommendations referring to transactions with financial instruments; agency of legal advice as well as estate planning.

In the context of the services listed above, the following qualifications of the Family Offices in Liechtenstein are possible but not mandatory.

### 1. Qualification of a Family Office as Liechtenstein financial service provider or bank

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As soon as a Liechtenstein Family Office provides financial services in Liechtenstein, it has to be qualified as a financial service provider or bank and requires an authorisation by the Liechtenstein Finanzmarktaufsicht (FMA, Financial Market Authority).

The activities of a Liechtenstein bank include the acceptance of deposits and other repayable funds; lending third-party money to an indeterminate circle of borrowers; assumption of guarantees and other liabilities for third parties if they are denominated on cash; or the dealing with currencies for one's own or for another's account. However, banks are also allowed to provide securities services and ancillary services.

## **2. Qualification of a Family Office as Liechtenstein securities firm**

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A Liechtenstein Family Office that provides securities services on a commercial basis requires the authorisation by the Liechtenstein Finanzmarktaufsicht (FMA, Financial Market Authority).

Liechtenstein securities firms are companies that provide securities services and ancillary services under Appendix 2 of the Banking Act. Thus securities firms are allowed to carry out only a part of the transactions made by banks. Providing securities services means that one or several of the services listed in Appendix 2, Section A of the Banking Act, in the context of certain financial instruments, are publicly offered.

## **3. Qualification of a Family Office as Liechtenstein investment company**

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Finally, the qualification of a private Family Office as a Liechtenstein investment company suggests itself.

### *3.1. Investment fund for qualified investors*

The vehicle of an investment fund for qualified investors, as regulated in the Liechtenstein law on investment companies (IUG), is especially suitable as a "private" Family Office centre. This fund is subject to special restrictions in terms of the qualification of the investors; however, owing to low publicity regulations and simplified authorisation provisions, it can be launched very quickly. One can assume with a qualified investor that, on account of his experience, the legal form, assets and investment volume, he is aware of specific risks and has only a limited need of protection; hence this fund is exempt from certain provisions of the law on investment companies (IUG) and the ordinance on investment companies (IUV). The launch of this Liechtenstein fund type, for instance, does not require the prior material authorisation by the Liechtenstein Finanzmarktaufsicht (FMA, Financial Market Authority).

Liechtenstein funds for qualified investors enable the investor to combine his entire moveable and immovable property into assets of a single fund. Classic securities (e.g. stocks, bonds, real estate), alternative investments (e.g. raw materials, private equity, precious metals, venture capital, other fund shares) or closed investments, for instance, are admissible assets.

According to the unambiguous wording of the law and the ordinance, Liechtenstein funds for qualified investors can also be launched as true single-investor funds; for this reason, they are ideally suitable as the master centre for one's own Family Office. With regard to larger wealth in particular, it is advantageous to have the asset situation documented in a comprehensible manner, on the level of a uniform database and individually adjusted to the needs of the capital investor.

This results, more or less, in a great reduction of time, administrative and coordination expenditure, depending on the size of the investment assets.

The Liechtenstein investment fund for qualified investors has to have at its disposal assets of at least CHF 2 million (or the equivalent in another currency). This minimum capital has to be achieved at the latest 6 months after the first subscription and may not fall short of this sum afterwards.

### *3.2. Implementation of the AIFM Directive*

The implementation of the AIFM (Alternative Investment Fund Managers) Directive through the law on the managers of alternative investment funds (AIFMG) in Liechtenstein resulted in a complete overhaul of the Liechtenstein IUG. Although the provisions of the IUG referring to the Liechtenstein investment companies for qualified investors will remain in effect until the implementation of the AIFM Directive as at 22 July 2013, all funds that are not undertakings for collective investment in securities (UCITS) and therefore not regulated by the law on certain undertakings for collective investment in securities (UCITSG) will be regulated by the AIFMG as of that date. In conformance with the European requirements, this law for the securing of international competitiveness and the uniform protection of shareholders/investors—alongside the introduction of the EU passport for funds and managers of alternative investment funds (AIFM)—makes greater personal and organisational demands on managers, business partners, custodians and the Financial Market Authority (FMA). The AIFMG rules that the AIFMs are subject to a disclosure duty and are obligated to obtain a Liechtenstein FMA license.

## **IV. Tax benefits of the Liechtenstein Family Office**

### **1. Income tax flat rate**

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Investment companies with registered office or their actual administrative centre in Liechtenstein are fully subject to income tax with their entire company income in Liechtenstein. All Liechtenstein investment companies are correspondingly subject to income taxes. The income tax amounts to 12.5%, at least however CHF1,200 annually. Taxation is limited to the taxable net income. The net income under commercial law has to be reduced, among other things, by the so-called equity return deduction of currently 4% on the modified equity. This equity return deduction reduces the taxable base and lowers the effective tax rate. What has to be taken into account here is that dividends from the investment in juridical persons as well as capital gains from the sale or liquidation of investments in juridical persons are exempt from Liechtenstein income tax. The proceeds from the managed assets, by contrast, are non-taxable income.

## **2. Sales charge and property fee**

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On the basis of the custom union agreement as well as the import law in the wake of the agreement, the Swiss federal law is applicable in Liechtenstein and the Swiss stamp duty also applies in Liechtenstein. Therefore the sales charge has to be kept in mind in the context of the Liechtenstein investment companies.

Liechtenstein funds are considered investors that are exempt from the stamp duty. Hence the stamp duty ascribed to the fund is dispensed with when domestic securities are bought or sold by a Liechtenstein fund. Provided that the Swiss regulations on the stamp duty are not applicable, the formation tax is levied according to Liechtenstein law.

## **3. Turnover tax**

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The transfer of property in shares of the managed fund against payment is subject to the Liechtenstein turnover tax provided that a party or broker is a domestic securities dealer. The redemption and issuance of Liechtenstein fund shares are exempt from the turnover tax.

## **4. Tax exemption**

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The property tax was abolished in the context of the Liechtenstein tax law coming into effect on 1 January 2011. The coupon tax is also omitted. Old reserves existing as at 31 December 2010 do not fall under the abolition of the coupon tax. Within the first two years, until 31 December 2012, the old reserves can be distributed at a lower tax rate of 2% or carried forward. As of 2013, the tax on old reserves not settled will be 4% again.

## **5. Privileged taxing of companies with the tax status of a personal wealth structure (PVS, Privatvermögensstruktur)**

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For Liechtenstein juridical persons whose sole purpose rests in asset management and that are not active commercially, the legislator in Liechtenstein has intended new tax privileges that are entailed in their qualification as personal wealth structure (PVS). Companies with PVS tax status are allowed to acquire assets, own them, manage and dispose of them. This activity is limited to the passive attainment of income from the assets, excluding any form of commercial trading. A PVS is allowed to hold investments in other companies only if it does not exert any real influence on the management of the affiliate. In addition, the owner of a PVS is not allowed to be an entrepreneur himself. Rather, he has to be a natural person, a company with PVS tax status or a person who acts as intermediary for account of these two groups.

The PVS is only subject to the minimum income tax of CHF1,200. Beyond that, no income tax is levied.

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