

# Establishment in Liechtenstein

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*Your LCG Team*

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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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