

The formation of Funds under Liechtenstein law

An overview of the formation and management of Funds in Liechtenstein

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Your LCG Team

Liechtenstein Funds

I. Legal Framework

Until recently, the different types of Funds in Liechtenstein were regulated under the Investment Undertakings Act (IUA). Under the Investment Undertakings Act (IUA), the various types of Funds in Liechtenstein were divided into the following categories: Investment Undertakings for securities; Investment Undertakings for other values; Investment Undertakings for real estate and Investment Undertakings for qualified investors (special type). Subsequent to the implementation of the Directive on Undertakings for Collective Investment in Transferable Securities (UCITS) and the Directive on Alternative Investment Fund Managers (AIFM), the original Liechtenstein provisions are being replaced by the Collective Investment of Transferable Securities Act (UCITS) which has already entered into force and by the Alternative Investment Fund Managers Act (AIFM). Henceforth, the different types of Funds in Liechtenstein will be divided as follows: Funds undertaking the collective investment of transferable securities and Funds which are not. The provisions of the said Investment Undertakings Act relating to the types of Funds hitherto will continue to apply until the Alternative Investment Fund Managers Act (AIFM) enters into force.

II. Concept

In Liechtenstein, Funds are treated as the equivalent to the concept of the Investment Undertaking. Under Article 2, Section 1(a) of the said Investment Undertakings Act (IUA), an asset is defined as that which has been raised from the public for the purpose of collective capital investments and which is managed by a Management Company for the joint account of the investors, insofar as not expressly otherwise provided, in accordance with the principle of diversification.

III. Types of Funds

1. Investment Undertakings for securities (or Investment Funds)

- Labelled as UCITS;
- Developed in accordance with the European Council Directive 85/611/EEC;
- Comply with all investor protection requirements and have a European passport due to Liechtenstein's membership of the European Economic Area (EEA);
- Contain other financial products, such as derivatives for example, in addition to securities

such as shares or bonds;

- Minimum Fund value: 1.25 million CHF (or the equivalent value in a different currency), which requires to be reached within, at the latest, a period of one year commencing from the granting of the licence.

2. Investment Undertakings for other values

- Regulated under the Investment Undertakings Act (IUA);
- Investments in precious metals, commodities and derivative financial instruments are particularly permissible;
- Minimum Fund value: 2 million CHF (or the equivalent value in a different currency), which requires to be reached within, at the latest, a period of 6 months commencing from the granting of the licence;
- Sub-category: Investment Undertakings with increased risk: (this includes the regulation of hedge funds and alternative investments); additional borrowing, derivatives for speculation purposes and short selling are permissible; minimum Fund value: see above.

3. Investment Undertakings for real estate

- Direct or indirect investment in privately or commercially used real estate in adherence to the diversification principle;
- Minimum Fund value: see point 2.

4. Special Funds: Investment Undertakings for qualified investors

- Particular restrictions on the qualification of the investors;
- Qualified investors include, for example, banks, insurers; Pension Funds; asset managers; Funds; other undertakings and Family Offices;
- Minimum fund value: 2 million CHF (or the equivalent value in a different currency), which requires to be reached within, at the latest, a period of 6 months commencing from the granting of the licence;
- Exempt from the requirement to obtain a licence from Liechtenstein's Financial Market Authority (FMA).

IV. Formation/Legal Forms

The four types of Fund can be formed in two legal forms:

1. Investment Fund

(contractual form in the legal form of the Unit Trust)

In the case of a Unit Trust, an undefined number of investors come together to invest and manage assets in the name of the investors. The individual investors participate on a pro-rata basis only and are liable for an amount not exceeding their respective individual investment amounts. Herein, a Trust agreement is concluded between the investors and the Management Company (Fund Management Company) in which it states that the Management Company shall manage the Trust assets on a trust basis for the investors – the statutory provisions on the Liechtenstein Trust apply hereto. The Management Company (Fund Management Company) is required to have capital of its own of at least 1 million CHF. Unit Trusts do not have legal personality. A Trust (not the Trust agreement) requires to be registered in the Commercial Register subsequent to being authorised by the Financial Market Authority (FMA).

2. Investment Company

(a corporation in the legal form of the Public Limited Company (PLC., Corp.) whose capital is either fixed (SICAF) or variable (SICAV) or in the legal form of the European Company (SE)).

An Investment Company is a Public Limited Company (PLC., Corp.) whose capital is either fixed (SICAF) or variable (SICAV) or is a European Company (SE). The Investment Company has its own capital (initial capital) as well as managed assets. The investors purchase shares in the Public Limited Company (PLC., Corp.) and thereby participate in the Fund. The articles of association set out the relationship between the investors and the Investment Company. The Investment Company comes first into existence upon its registration in the Commercial Register. It may be externally or internally managed:

a. Externally managed Investment Company

- An external company as the Management Company (Fund management); the externally managed Investment Company delegates operative management and administrative functions;
- The board of directors consists of one or more than one natural or legal person;
- Has a capital of 50,000 CHF;
- The management of the company is compulsorily delegated;
- Functions which cannot be transferred:
 - Determination of the investment policy regarding the managed assets;
 - The selection of a suitable asset manager for the managed assets;
 - Substantive decisions on the issue and redemption of the investor shares;
 - The determination of the essential contents as well as the prospectus and the periodical reports;
 - The decision on the dissolution or re-structuring of the managed assets;
 - Any other functions of the board of directors under Liechtenstein's Persons and Companies Act.

b. Internally managed Investment Company

- It itself acts as the Management Company (integrated management function);
- Has capital amounting to 500,000 CHF (the managed assets exceeding 1 million CHF are subject to an additional 0,02% herein);
- Board of directors having at least 3 members, plus management which must consist of at least 2 persons;
- Is only permitted to manages its own assets.

c. Shares

- An Investment Company may issue its own capital as either bearer or registered shares with or without voting rights attached;
- Due to their contribution, the investor acquires claims on the Investment Undertaking as to participation in its assets and proceeds;
- Shares in the Investment Undertaking are permitted to be sold only by such persons having a special statutory licence to do so and with regard to whom, it has been ensured that they

Excursus: Investment Company with fixed capital (SICAV):

The capital of the Investment Company is not fixed: it instead fluctuates in accordance with the capital invested. In principle, a SICAV may issue new shares at any time not exceeding its net asset value, through which its capital subsequently increases. The reverse thereof is that, in principle, its investors have the right to redeem their shares in the SICAV at any time and this consequently reduces the SICAV's capital. In contrast to closed Investment Funds (SICAF), A SICAV is therefore described as an open Investment Fund due to such possibilities as to entry and exit.

V. Management Company

It is required that the Management Company of an Investment Undertaking in Liechtenstein has its registered office in Liechtenstein. The Management Company must obtain a licence from Liechtenstein's Financial Market Authority (FMA) – as must internally managed Investment Companies. The Management Company's activities are exclusively the management of the Investment Undertaking and the functions connected thereto (Fund business).

The functions of a Liechtenstein Management Company include the following:

- Investment management
- Administrative activity

- Accounting services as prescribed by statute and prescribed within the framework of investment management;
 - Customer enquiries;
 - Valuation and the setting of prices (include tax returns);
 - Ensuring that the legislative provisions are complied with;
 - The keeping of a register on the distribution of the profits to the shareholders;
 - Issue and redemption of shares;
 - Contact account/settlement – including the sending of the certificates;
 - Record-keeping.
- Sale, distribution, marketing.

VI. External Auditing

The commercial activity of Investment Undertakings and the Management Company must be audited annually by an independent auditor recognised by the FMA.

VII. Depositary

The assets of an Investment Undertaking in Liechtenstein must be assigned to a depositary in Liechtenstein. Only a bank which is either authorised under the Bank Act or which is the established branch of a bank within the EEA in accordance with Article 30(d) may be appointed as a depositary.

VIII. Prospectus

A comprehensive prospectus requires to be produced by every Investment Undertaking which enables the investors to carry out a detailed evaluation of the proposed investments and the associated risks. The said prospectus requires to be approved by the FMA (Content of the Prospectus, Article 6, IUA).

IX. Taxation in Liechtenstein

1. Investment Undertakings

- The managed assets are not liable to taxation;
- The proceeds generated from an Investment Undertaking's assets are not liable to corporate income tax (no minimum corporate income tax payment);

- The issue and redemption of shares are free from stamp duty;
- Payments made to the investors from the managed assets are not liable to withholding tax;
- The own capital and proceeds of the Investment Undertaking are liable to ordinary taxation. Corporate income tax at a rate of 12.5% (minimum corporate income tax payment of 1,200 CHF).

2. Management Company

- Liable to ordinary taxation.

3. Investors

- Distributions to investors derived from shares in the Fund are subject to income tax in the country of the investors.

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