

Foundation in Liechtenstein

I. Legal structure of the foundation

1. Concept
2. Purpose
3. Formation
4. Nominal capital or minimum capital
5. Company name
6. Organisation
 - 6.1. *Governing bodies*
 - 6.2. *Auditors or control agency*
 - 6.3. *Founder*
 - 6.4. *Representative*
 - 6.5. *Beneficiaries*
7. Founder's rights
8. Liquidation

II. Fiscal structure of the foundation

III. Effective structure of the foundation

IV. Private- Benefit (Family-) Foundation

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

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

1. Tax exemption
2. Other advantages of a private-benefit Liechtenstein foundation

Foundation in Liechtenstein

This publication is provided for information purposes only and should not be treated as a substitute for a tax or legal consultation or for the reading of Liechtenstein's legislation or public statements in relation to the foundation. The reader should not act on the basis of the information contained in this publication without having obtained individual, expert advice. In particular, individual advice from tax consultants or lawyers should be sought with regard to the information on the tax treatment of foreign investments. LCG Treuhand AG does not assume responsibility for any damage resulting from decisions made by the reader on the basis of this publication.

The following text is an excerpt from the LCG-brochure "Business Liechtenstein Company Formation".

May 2013

Your LCG Team

Foundation in Liechtenstein

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

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

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

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.

.....
LCG Treuhand AG

You can contact the author at:

Tel.: 00423 371 12 12

office@lcg-liechtenstein.li

.....