

Private trusts, foundations and charities

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This article addresses the rules and procedures governing the establishment and maintenance of private trusts, foundations and charities in Liechtenstein. **(1)**

Private trusts

The Anglo-Saxon trust concept was received by Liechtenstein civil law as early as 1926, following the enactment of the Law on Persons and Companies (the Companies Law). Further, in 1928 Liechtenstein enacted the Law on Trust Enterprises, as set out in Article 932(a) of the Companies Law. Trust enterprises were modelled after US business trusts.

On 1 April 2006 Liechtenstein acceded to the Hague Convention on the Law Applicable to Trusts and on their Recognition.

Like its Anglo-Saxon counterpart, Liechtenstein trust settlements, as opposed to the trust enterprise or the business trust, enjoy no legal personality. Therefore, if a trust appoints no physical or legal person resident in Liechtenstein as trustee, it must have a legal representative in Liechtenstein.

The formation of a trust is effected when the trust deed is signed by the settlor and trustee or by a letter or declaration of trust. Optional registration with the Commercial Register Division (instead of depositing the trust deed) has no constitutive effect. Liechtenstein law embodies no provisions preventing perpetuity.

Where parties must or intend to register their trust with the Commercial Register Division, the following information must be given:

- the trust's date of formation;
- the trust's designation;
- the trust's duration (ie, limited or unlimited); and
- the trustees' names and addresses.

As an alternative to registration, trust deeds may be deposited with the Office of Justice. By doing so, a deposited trust will not exist in any register accessible to the public and access to the information therein will be prohibited unless a justifiable interest can be shown.

Under Liechtenstein law, trusts may be:

- created *inter vivos* or by will;
- revocable or irrevocable; and
- modifiable or unalterable.

There is no prohibition on accumulating income and no rule against perpetuity. Therefore, the most important types of trust are discretionary trusts and fixed-interest trusts.

Liechtenstein law also recognises purpose trusts and asset protection trusts. Regarding asset protection trusts, the law stipulates as follows:

- The settlor should settle the trust at a time when it has no creditors and infringes no statutory inheritance claims.
- Claims by a person entitled to a compulsory portion in the estate made in order to supplement that portion and brought against a Liechtenstein legal person or special endowment must be:
 - permitted under the applicable law of succession; and
 - admissible under the law applicable to asset acquisitions.
- Liechtenstein law can be chosen to govern the acquisition of assets by the legal person or by

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special endowment.

- Under Liechtenstein law, claims to supplement a compulsory portion of an estate can be brought only against gifts made two years prior to the testator's death.
- Creditors of a beneficiary may only bring claims against the trust property, by means of debt enforcement or bankruptcy, insofar as the beneficiary itself has claims against the trust property and where there is no provision for inalienability.

Trusts (settlements) are endowments without personality and pay only the minimum corporate income tax (Sfr1,800). Under Article 65 of the Tax Act, they are not liable to tax assessment; however, under Article 44, they have a limited tax liability on their Liechtenstein income. Balance sheets need not be submitted to the Liechtenstein tax authorities.

Foundations and charities

Liechtenstein introduced the concept of the private foundation in 1926, following the enactment of the Companies Law.

Foundations can be used for purely private-benefit purposes (eg, to cover the costs of education, learning, equipment or support) or purely common-benefit purposes (eg, to support and promote charitable, artistic, scientific or social work), or a combination thereof. When it is not entirely clear from the statutes or supplementary by laws whether a foundation is for private-benefit or common-benefit purposes, it will be classified as a common-benefit foundation.

Foundations are unsuitable for pursuing purely commercial ventures. They may conduct business along commercial lines only if:

- this achieves their common-benefit purpose; or
- the scope and nature of the shares they hold make a commercial business necessary.

Foundations that have been granted private asset structure status must not engage in business activities (eg, the exercise of control over participating interests).

Foundations may be formed by one or more natural or legal persons. They may also be formed by an indirect representative (eg, corporate service provider). In the latter case, the authorising person is deemed to be the founder. The indirect representative must inform the foundation council of the founder's identity. There are no restrictions on the founder's nationality or domicile.

Foundations may be formed through:

- a declaration of establishment (foundation deed), on which the signature of the founder or, where there is indirect representation, the signature of the indirect representative must be authenticated;
- a last will and testament; or
- a contract of inheritance.

As a rule, foundations are formed through declarations of establishment (statutes). If the foundation is not subject to an obligation to register, each member of the foundation council must deposit notification of the formation at the Office of Justice Commercial Register Division within 30 days of formation. However, the foundation deed need not be deposited. The legal representative also has authority to effect the deposit.

The minimum capital requirement for a foundation is Sfr30,000. This amount may also be paid in euros (€30,000) or US dollars (\$30,000). As a rule, the foundation capital must be paid in full.

Foundations must be registered with the Commercial Register Division if:

- their purpose is entirely or predominantly for the common benefit; or
- they conduct business along commercial lines to achieve a non-economic purpose or if the scope and nature of the shares they hold make a commercial business necessary.

The foundation council is the supreme body of a foundation and is responsible for its management. Each member of the foundation council is personally responsible for ensuring compliance with the foundation deed, supplementary foundation deed and regulations. Foundation councils must have at least two members. Legal entities may also be foundation council members.

At least one member of a legal entity's (foundation's) board of directors with managerial and representational authority must be a national of a contracting party to the Agreement on the European Economic Area, a person accorded the same status on the basis of a state treaty or a legal person and must hold a licence under the Professional Trustees Act.

Persons holding a licence under the Law on the Supervision of Persons pursuant to Article 180a of the Companies Law are accorded the same status.

Legal persons (including foundations) and branches of foreign legal persons in Liechtenstein must appoint a citizen of an EEA member state (including the European Union) who is permanently resident in Liechtenstein as their legal representative.

Foundations whose purposes are entirely or predominantly for the common authority benefit are subject to the supervision of the foundation supervisory authority, a department within the Office of Justice which monitors whether foundation assets are being managed and appropriated in accordance with their purposes.

An audit authority is prescribed for common-benefit and registered foundations which conduct business along commercial lines to achieve a non-economic purpose. The audit authority must be independent of the foundation.

In regard to common-purpose foundations, the audit authority is obliged not only to audit the accounts annually, but also to verify annually whether the foundation assets are being managed and appropriated in accordance with their purposes. It must also submit a report to the foundation supervisory authority and the foundation council on the outcome of its audit. In particular, common-benefit foundations with assets worth less than Sfr750,000 which do not make public appeals for donations may request exemption from the obligation to appoint an audit authority. Any foundation not registered with the Commercial Register Division must maintain appropriate records from which its financial circumstances and income can be ascertained.

Foundations registered with the Commercial Register Division which carry on commercial business to achieve a non-economic purpose are required to keep proper accounts.

In regard to foundations that are voluntarily registered with the Commercial Register Division which do not conduct business along commercial lines and whose foundation deeds do not permit the operation of such business, a member of the foundation council must submit a declaration to the Office of Justice. This declaration must confirm that, in accordance with orderly accounting principles, records appropriate to the asset situation are maintained and documents are kept, such that the business performance and development of assets can be ascertained.

A registered foundation that conducts commercial activities along commercial lines to achieve a non-economic purpose must submit its audited financial statements annually to the Liechtenstein tax authorities within six months from the audit of its financial statements by the audit authority.

Foundations are generally subject to unlimited corporate income tax at a flat rate of 12.5% of their net profit, regardless of the level of income and distribution. Income and profits from participating interests are exempt from tax, irrespective of the time of holding and of voting rights or share in the capital.

Income in the form of interest is also reduced by a so-called 'equity capital interest deduction'. Reasonable interest paid on modified equity capital is also treated as a justified business expense, to the level of the target income. This reduces taxable interest income in case of a high level of self-financing. The minimum annual tax is Sfr1,800.

Private asset structures pay only the minimum annual tax of Sfr1,800 in advance and cannot engage in 'business activity', which is widely construed.

Distributions by a foundation to beneficiaries domiciled abroad are not taxable in Liechtenstein.

Charitable foundations can be exempted from tax liability subject to the tax administration's approval of their written application. If the tax exemption is valid from the moment that the foundation is established, the foundation is not subject to the minimum corporate income tax.

*For further information on this topic please contact [Johanna Niegel](#) at *Allgemeines Treuunternehmen (ATU)* by telephone (+423 237 34 34) or email (office.frick@atu.li). The *Allgemeines Treuunternehmen (ATU)* website can be accessed at www.atu.li/en.*

Endnotes

(1) This article is part of a series that examines recent developments in the provision of private client services in Liechtenstein. For the first article in the series, please see "[Recent developments and tax considerations for private clients](#)".

