

THE FOUNDATION

At the Heart of Liechtenstein's Company Law

Liechtenstein's new Foundation Law recognises, in comparison to previous laws, a split between a Charitable Foundation and a Private Foundation. Special emphasis has been given to protecting the foundation's assets from claims by creditors against the founder. A mere depositing of the deeds guarantees the founder a high level of anonymity. The revised Foundation Laws serve to prevent misuse and, at the same time, follow the interests of international clients by achieving a compromise between transparency and discretion.

Liechtenstein's new Foundation Laws came into force on 1st April 2009. A complete revision of the Foundation Laws resulted in the new version which derived from Personal and Company Law (PGR) of 1926. With the backdrop of international pressure and future challenges for the Liechtenstein financial market place, the government decided on a reform that not only combated misuse but provided, as a focal point, a long-term solution in the interest of international clients. It was evident that this reform dealt with the Liechtenstein Foundation, which is a very important product for the financial market place and has contributed extensively to the commercial success of the Liechtenstein trust sector.

Safeguarding Competition in the Financial Market Place

A complete revision of Foundation Law is an integral part of the *Futuro* project - a vision for the future. *Futuro* has, at its core, the aim of utilising Liechtenstein's traditional strengths, creating sustainable growth, increasing globalisation and gaining high international recognition. Foundations are the heart of the *Futuro* vision for the financial market place which, in future, will be directed towards Family Foundations that are increasingly sought after and deemed to be an instrument for the planning of succession. *Futuro* allocates an important position to Charitable Foundations by which the Principality of Liechtenstein could develop into a philanthropic cluster. In order to continue the tradition of the Liechtenstein financial market, which placed particular value on privacy and private autonomy, *Futuro* encourages a fundamental revision of foundation laws. This has been made possible through the modernisation of prevailing foundation law to safeguard Liechtenstein's competitiveness against other locations and at the same time, increase acceptance of the new structures with foreign opinion makers and authorities. Through the revision, the Government has attempted, in its own words, to achieve a sustainable solution that not only serves to combat misuse but is a compromise between transparency and discretion, a central point of concern of international clients.

Transparency and Legal Certainty

The new Foundation Law is, in itself, a comprehensive work which draws a fundamental line between Private and Charitable Foundations. Current legal uncertainties evolving from contradictory legal rulings have been eliminated and open legal questions - e.g. in connection with the structure of fiduciary foundations, the legal position of beneficiaries or the design of the foundation's purpose – have been cleared. The Government sees in this new model of supervision a strengthening of legal certainty: only the supervision of Charitable Foundations falls under the custody of the Public Register Office whereas there is no mandatory supervision for Private Foundations although the possibility of voluntary control by the Foundation's Supervisory Authority has been provided for. The authority to order control measures as well as to change the purpose of the Foundation or other elements of the foundation's deed, now lies in the hands of a judge in the form a special non-contentious legal procedure. The Foundation's Supervisory Authority is obliged to supervise and control foundations under its custody but must, in cases of dispute, take court action in order to implement those rights.

Charitable and Private Foundations

In comparison to previous law, which recognised numerous aims of foundations, the new Foundation Law simply differentiates between Charitable and Private Foundations. The aims of the foundation must be directed outwardly whereby a Self-Perpetuating Foundation, which follows solely the aim of increasing wealth without dividends, is no longer permitted. Religious Foundations, which no longer enjoy a separate category, have under the new laws, been reallocated to Charitable Foundations, because of their claim to charitable activities within the field of religion. Churches and religious communities as well as third parties can continue to establish foundations for religious purposes. The classification of foundations for private or charitable purposes has been made with a view to supervision and publication (the obligation to register in the public register).

De facto: foundations whose aims are totally or predominantly to serve charitable purposes are Charitable Foundations whereas Private Foundations are considered on the basis of private or self-purpose. In the case of Private Foundations a differentiation is made between Pure Family Foundations and Mixed Family Foundations which, in addition to their predominantly family aims, also follow charitable ones. Family Foundations are seen as Private Foundations even when distribution is characteristically charitable. The creation of the category of Private Foundations stems from the interest to maintain secrecy and to eliminate the

necessity of entry into the Public Register and therefore supervision by the Foundation's Supervisory Authority, because the participators are able to supervise and control themselves. Should a Private Foundation become a Charitable Foundation e.g. when the foundation deeds stipulate that after the death of the last beneficiary the foundation should follow a charitable purpose, the foundation must then be entered into the Public Register.

Consolidating the Responsibility of the Founder

The new Foundation Laws have tightened the responsibility of the founder, have introduced rules of non-transferability of the founder's rights and have provided a clear legal basis for the construction of trust foundations. In the past, the majority of foundations were constructed by fiduciaries which led to far-reaching powers of the fiduciary. The new Foundation Law does not compromise this tradition of creating foundations through fiduciaries as the Supreme Court of Justice had already judged under old Foundation Laws that the creation of a foundation through a Liechtenstein fiduciary cannot be deemed as bogus. The new legal rules clearly stipulate that the trustor is to be seen as the legal founder. The discretion, that is strived for by many trustors, does not suffer under this rule because publication is only necessary in exceptional circumstances. The new rules provide clarity as to the founder and the allocation of foundation rights, but at the same time protect the anonymity of the founder.

Deposited Foundation to Be Continued

The new Foundation Laws contain extensive regulations on foundation governance. This is displayed in the difference between the governance of Charitable and Private Foundations because only Charitable Foundations are under the surveillance of the supervisory authorities. The new governance system is a mixture of external State supervision and internal control by the foundation's participators. Private Foundations, on notification, are subject to a three-step control system: after the foundation deeds have been examined by a lawyer or fiduciary the Public Register Office issues an official confirmation. It is mandatory for Private Foundations which voluntarily subject themselves to supervision and all Charitable Foundations to appoint an auditor.

The rights of the beneficiaries have also been strengthened through the new Foundation Law. These now have a right to view the foundation's deeds and any other codicils. The right to information encompasses access to records whereby the beneficiary also gains the right to view the accounts. The law provides limitations to information on suspicion of misuse or misappropriation.

Foundation Governance and Rights of Beneficiaries

The new Foundation Laws contain extensive regulations on foundation governance. This is displayed in the difference between the governance of Charitable and Private Foundations because only Charitable Foundations are under the surveillance of the supervisory authorities. The new governance system is a mixture of external State supervision and internal control by the foundation's participators. Private Foundations, on notification, are subject to a three-step control system: after the foundation deeds have been examined by a lawyer or fiduciary the Public Register Office issues an official confirmation. It is mandatory for Private Foundations which voluntarily subject themselves to supervision and all Charitable Foundations to appoint an auditor.

The rights of the beneficiaries have also been strengthened through the new Foundation Law. These now have a right to view the foundation's deeds and any other codicils. The right to information encompasses access to records whereby the beneficiary also gains the right to view the accounts. The law provides limitations to information on suspicion of misuse or misappropriation.

Creditor and Asset Protection

Special emphasis has been given to the protection of a foundation as a legal entity e.g. the protection of the founder's assets from creditors' claims against the beneficiary. The execution privilege allows the founder to use the foundation as an instrument for asset protection i.e. the protection of wealth. The foundation thereby becomes an instrument of provision for the family members, because it ensures that the provisions will still function even if the beneficiary family member is heavily in debt.

Asset Protection is an important element which makes Liechtenstein Foundation Law particularly attractive. Since the introduction of Personal and Company Law (PGR) in 1926 it has developed into an organically growing institution and has been decisive in its contribution to the business success of the fiduciary sector in the Principality of Liechtenstein.

Attractive Foundation Tax

The new tax law which came into force on 1st January 2011 differentiates between two forms of company taxes: enterprises, which undertake commercial activities, are subject to a general tax on earnings of 12.5%. Foundations, which administer assets for private persons and conduct no commercial activity, can qualify as a Private Asset Structure (PVS) and are subject to a yearly tax of at least 1200 Swiss Francs.