

## The Trust in Liechtenstein Law

**The conceptual roots of the Liechtenstein trust do not spring from continental legal tradition. Liechtenstein law has adopted the Anglo-saxon trust. The basic principles upon which the Liechtenstein trust reposes are to be found in English statutes, jurisprudence and commentaries such as Godefroi's «On Trusts and Trustees».**

Within the framework of a relationship based upon trust, assets are transferred to the trustee with the obligation upon the trustee that he is to hold and administer such property in his own name as the legal owner thereof for the benefit of one or several third persons (beneficiaries) or for a particular purpose.

Once the trust has been settled both the trustee and the settlor are bound by the intention of the settlor as set forth in the relevant trust instrument. Subject to the limits set by the mandatory provisions of the law and public order, the terms of the trust instrument are paramount in determining the relationship between the settlor, the trustee and the beneficiaries.

The general legal concept namely the trust, has a wide range of applications which differ from one another in the manner in which they arise and function. Thus, by way of example, use can be made of the trust instead of the family founda-

tion for the purpose of managing family estates for the benefit of members of certain families (Express Family Trust), thereby removing from individual family members the right to manage the trust property in order to ensure a management of the property which will benefit the entire family. In this manner the safeguarding of the interests of an entire family for generations to come can be guaranteed. The trustee is personally responsible for the due performance of his functions and duties for the benefit of the beneficiaries.

### **The Beneficiaries**

The settlor may specify conditions according to which a beneficiary shall be appointed and removed. Various possibilities exist in structuring the beneficial interest. The same may be made conditional, or for a limited period (life estate), subject to the fulfilment of certain requirements or subject to certain limitations, it may be alienable or inalienable, transferable or non-transferable, inheritable or non-inheritable etc. The beneficial interest may be limited to the income of the trust or include a share in the capital thereof.

### **The Protector**

The settlor has a number of interesting possibilities when structuring the trusteeship. He can ensure

### **Liechtenstein Company Law**

(Excerpt – Non official Translation)

#### **The Trusts in General**

#### **Art. 897**

A trustee within the intentment of this law is a natural person, firm or legal entity to whom another (the settlor) transfers movable or immovable property or a right (as trust property) of whatever kind with the obligation to administer or use such property in his own name as an independent legal owner for the benefit of one or several third persons (beneficiaries) with effect towards all other persons.

## The trustee is bound by the intention of the settlor as set forth in the trust instrument.

the constant supervision of the administration of trust property through a person of his particular confidence.

The office of a protector is often made use of in Liechtenstein trusts for tax purposes. Inasmuch as according to the tax laws of most western jurisdictions, the trust shares the same residence for tax purposes as the trustee and in the event of more than one trustee there may be competing opinions as to where the trust is resident and thus to be taxed. Many settlors wishing to shelter the income from the trust in Liechtenstein appoint a person of their confidence as protector instead of a co-trustee.

Such a protector may have all of the administrative powers of the trustee, but is never the legal owner of the trust property and thus never required to report the income of the trust. Thus the settlor may enjoy all of the tax advantages of settling a trust in Liechtenstein without the disadvantages which may arise from the fact that he must entrust his property to a professional Liechtenstein trustee with whom he has no personal relationship.

### **The Particularities of the Liechtenstein Trust**

In contrast to the Anglo-american trust, Liechtenstein law adopted

### **The Settlement of the Trust**

A trust is settled by:

- a written agreement between the settlor and the trustee whereby it is not necessary to mention the legal reason or motive for the settlement;
- a unilateral declaration on the part of the settlor, in which case a declaration of acceptance on the part of the trustee is necessary in order to create the trust; or
- last will and testament; in order to establish a trust relationship in such a case as well, the written declaration of acceptance on the part of the trustee is necessary.

Moreover, a trust only arises when in addition to the declaration of trust a transfer of property is undertaken.

neither the rule against accumulations nor the rule against perpetuities so that it is possible to establish a trust having a perpetual existence.

There is no obligation to register the trust settlement in the Public Registry if the trust instrument is deposited at the office of the Public Registry within a period of twelve months next following the settlement. Third persons have no access whatsoever to documents which have been so deposited.

### **The Creditors of the Settlor**

The creditors or the legal successors of the settlor may challenge

and set aside the settlement thus acquiring the right to seek the satisfaction of their claims out of the trust property, if the grounds as set forth in the succession law, the gift law or the law concerning the avoidance of transactions, which grounds would prohibit the settlement, exist. The applicable law is always the law which applies to the particular assets which have been transferred. In calculating the forced share to which an heir is entitled by law, such transfers by way of gift which predate the demise of the deceased by more than two years shall not be taken into consideration and such transfers may not be challenged.

## Liechtenstein law adopted neither the rule against accumulations nor the rule against perpetuities.

The death or the bankruptcy of the settlor does not terminate the trust unless there is a provision to this effect in the trust instrument.

### **The Creditors of the Trustee**

The trust property is treated as a separate estate in execution proceedings, and in the event of the bankruptcy of the trustee. In this way, the settlor and the beneficiaries are protected from the claims of third parties against the trust property.

The bankruptcy of the trustee principally does not terminate the trust.

### **The Creditors of the Beneficiaries**

The creditors of the beneficiaries may only claim against the trust property by way of execution proceedings or by way of bankruptcy to the extent that the beneficiaries themselves may claim against the same trust property.

The settlor may stipulate in the trust instrument that a beneficial interest which has been acquired for no consideration, may not be withdrawn from a beneficiary by way of execution, or bankruptcy proceedings.

If the trust instrument so provides, then the creditors of the beneficiary shall not be able to look to

his beneficial interest in a trust for the satisfaction of their claims.

### **International Law and a Trust Settlement according to Foreign Law**

It is possible to settle trusts which are to be governed by foreign law in the Principality of Liechtenstein. Thus, the settlor has the possibility of settling a trust which is to be administered according to his personal law, but which nevertheless enjoys the tax advantages which the domicile of the trust in Liechtenstein accords. In such a case the relationship between the trustee, the settlor and the beneficiaries is to be governed by foreign law which foreign law must be mentioned in detail in the trust instrument.

### **The Rendering of Accounts**

The trustee unlike in the case of legal entities, has neither an obligation to render annual financial statements concerning the trust property (balance and income statements) for the purpose of submitting the same to the tax authorities nor must he confirm to the Public Registrar that a statement of assets has been prepared and that the trust has during the past year not carried on any type of commercial activity (declaration).

However, the trustee is obligated to provide the participants of the

trust with a statement of the trust assets and to revise the same annually. Moreover, the trustee is obligated to render accounts annually and to provide information upon request at any time to the settlor, or to the beneficiaries.

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## The safeguarding of the interests of an entire family for generations to come can be guaranteed.

### Capital Tax, Income Tax and Capital Earnings Tax

To the extent that foreign trust property is concerned no income or capital earnings tax is levied in Liechtenstein. In such a case the trust receives the same tax treatment as a holding or domiciliary company. The trust must pay an annual tax on capital which is calculated as 0.1 per cent of the net value of its assets at least CHF 1,000.-.

### Taxation of the Beneficiaries

Such beneficiaries as are resident or domiciled abroad do not pay taxes

in Liechtenstein with respect to the benefits which they receive from the trust property. The same applies with respect to the distribution of the trust property upon the termination of the trust.

### Conclusion

A unique combination of factors, being the practical non-existence of filing requirements, the guarantee of investor anonymity, the low tax burden and a wide range of structuring possibilities enables the Liechtenstein attorney to structure a trust which optimally meets individual requirements.

## F.L.BULLETIN

*Liechtenstein has gained attractivity as a banking location since the country joined the European Economic Area (EEA) in 1995. In addition to the banks existing at that time, three further banking institutions have been opened and licence applications have been filed for another two. This means that the number of banks working in Liechtenstein is going to have doubled within three years.*

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*In the EEA, banking licenses are awarded according to the single licence principle. Each bank that has a licence in one EEA country may form a branch in any other EEA country or offer its services across national borders. Branches in Liechtenstein are controlled by the supervisory authorities of their home countries, while Liechtenstein banks in other EEA countries are subject to Liechtenstein bank supervision.*

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*In 1997, the balance sheet total of the banks licensed in Liechtenstein increased by 6.2 per cent to 27.4 billion Swiss francs; compared with 1970, this is an increase by a factor of twenty. The customer assets reckoned for balance sheets – without customer deposits and trust investments – amounted to 24.3 billion. The net profits of the banks increased by 33.5 per cent as compared with last year and reached a new high with 310.4 million Swiss francs.*

### Summary of Services

- International Tax Planning;
- Estate Planning, Portfolio Counselling and Management; Structuring and Administration of Asset-Protection Trusts and Vehicles;
- Incorporation, Domiciling and Administration of Liechtenstein and Foreign Companies;
- Counselling in Business, Commercial, Fiscal and Financial Matters. International Business Transactions;
- Intellectual Property, Licensing and Franchising;
- Bookkeeping and Auditing;
- Civil, Criminal and Administrative Litigation;
- Legal Opinions.

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