

A Liechtenstein Foundation

An Attractive Instrument for Estate Planning and Asset Protection

For decades, Liechtenstein has enjoyed political stability and an advanced legal, social and economic system. Credit rating agencies such as Standard & Poor's and Moody's have awarded AAA ratings to Liechtenstein - a country which has held a customs and currency union with Switzerland since 1923 and, since 1995, has also been a member of the European Economic Area. Liechtenstein upholds universal standards on taxation as well as a commitment to fight financial crime without compromising the privacy of clients. The Foundation has been at the heart of company law and has, for decades, served financial planning and the preservation of assets.

The 1926 Personal and Company Law has been the corner stone of Liechtenstein's financial marketplace. When compared with the various types of companies as described in company law, the foundation commands a prominent position. The majority of foundations in Liechtenstein act as a Family Foundation to administer assets and descendant's estate or as a Holding Foundation which participates in active companies. Contrary to a company, the foundation has no shareholders but beneficiaries, who are designated in accordance with the wishes of the founder and are entitled to a part of the assets or its proceeds.

Basically, foundations are autonomous assets with their own legal entity. The Liechtenstein Foundation is thereby an excellent legal instrument in the form of a Family Foundation, for the administration

of descendant's estate for generations to come, or a Holding Founda-

tion, for the protection of assets. In the light of developments in the financial marketplace, Liechtenstein undertook a reform of foundation law with two goals in mind: on the one hand, extensive provisions for the fight against misuse and, on the other, a long-term solution which focuses on the interests of international customers. The reform was completed in 2008 and the new Foundation Act came into force on 1st April 2009.

Attractive Asset Protection

Asset protection is one of the most appealing elements of Liechtenstein Foundation Law, which has developed into an organic institution since the Personal and Company Law was instigated in 1926 and has made a decisive contribution to the success of the fiduciary sector in the Principality of Liechtenstein. A particularly important aspect of foundation law is the protection of the foundation's assets from claims made by creditors against the founder. A Liechtenstein foundation permits the founder to achieve various goals because law makers have succeeded in creating a balance between the interests of the founder in protecting the dedicated assets and creditors' claims against the foundation, the founder or the beneficiaries. These goals also include the planning of succession, thereby safeguarding family assets for future generations. When a foundation is set up, the assets of the foundation are clearly separated from those of the founder, thus protecting the foundation's assets from unjustified claims by third parties. The foundation is also an instrument that provides protection against political risks, which may occur in the mother country of the founder or the beneficiaries.

A Foundation is a Legal Entity with Autonomous Assets and Independent Goals

Private and Charitable 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 the sole

aim of increasing wealth 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 can continue to establish foundations.

Basically, foundations are classified as charitable if the activities set out in their Declaration of Foundation, follow a sole or predominantly charitable purpose whereas private foundations are judged 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 being mainly for the family's benefit, also follow charitable purposes. Family foundations are generally seen as private foundations. The creation of a private foundation category stems from an interest to maintain privacy by eliminating the necessity of entry into the Public Register and government supervision because the participants 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

F.L. Trending on the Internet

Visit our website at www.seeger.li to download previous editions of F.L.Trending.

then be entered into the Public Register.

Creation of a Foundation by a Fiduciary

The most common forms of private foundations are family foundations and company foundations i.e. holding foundations. The assets of a family foundation are solely used to cover the costs of education and upbringing, providing for and supporting family members or a number of families. Foundation law permits mixed family foundations which predominantly follow the same goals as pure family foundations but, in addition, are directed at charitable or other private purposes. Foundations can also serve as company foundations which hold shares in a company conducting business. A founder is able to safeguard his assets in a foundation for generations to come, because the assets deposited may not be distributed amongst their heirs or their successors. Similarly, a family company can be preserved as a whole, if all or part of the shares of the company are placed in

IMPRINT

Publisher and Copyright Owner:
ArComm Trust Company Establishment

Responsible for Contents
Law Office of Dr. iur. et lic. oec. HSG
Norbert Seeger

Editing and Arrangement
Dr. iur. et lic. oec. HSG Norbert Seeger

Address of Publisher, Editor and all Responsible Persons

P.O. Box 1618, FL-9490 Vaduz
Am Schraegen Weg 14
Telephone: +423 232 08 08
Facsimile: +423 232 06 30
E-mail: admin@seeger.li
Homepage: www.seeger.li

F.L.Trending is a registered trade mark. All rights are reserved. No part of this publication may be reproduced or stored in a retrieval system or transmitted in any form or by any means, whether electronic, mechanical, photocopying, recording or otherwise without the prior permission of the copyright owner.

DISCLAIMER

The material contained in this publication is not intended to be advice on any particular matter. No reader should act on the basis of any matter contained in this publication without considering appropriate professional advice. The publisher, the author and editor expressly disclaim all and any liability to any person in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance upon the contents of this publication.

© ArComm Trust Company Est., 2012

Asset Protection, an Important Element in Liechtenstein Foundation Law, has International Appeal

a company foundation. The instructions necessary for the commercial activities of the company can also be set out in the foundation deeds.

The Liechtenstein foundation allows the founder to create a foundation according to his or her own wishes. Changes can be made later if this has been expressly stipulated in the deeds or the foundation by-laws. The founder is at liberty to determine the beneficiaries to the foundation and the extent of their benefits. The Foundation law allows the founder to name specific beneficiaries or a circle of beneficiaries, e.g. the heirs of the founder. The list of beneficiaries can be amended providing that the necessary provisions have been made in the foundation deeds. The creation of a foundation takes place by means of a declaration made by the founder. As a rule, Liechtenstein foundations are drawn up by a fiduciary, the advantage being that the name of the founder is not disclosed to the authorities. In the case of a so-called "Fiduciary Foundation", the founder is not named in the foundation deeds as this document bears the signature of the fiduciary and not the founder.

Private foundations, i.e. family foundations and company foundations, need not be entered into the Public Register as in the case of charitable

Deposited Foundation Guarantees Privacy

Foundations guarantee a high degree of privacy for the individuals who create them in order to preserve assets or plan succession. The Deposited Foundation is a traditional legal instrument which was created to provide privacy and was retained in the new laws, which came into force in 2009. Private foundations, such as family foundations and company foundations, need not be registered in the Public Register. Such foundations become legal entities on declaration of the foundation, however, the law stipulates that the declaration of foundation be deposited at the Land and Public Registry Office within 30 days. Through the declaration of foundation, Liechtenstein lawyers and fiduciaries have been given control duties, which take on a public and legal character, because they confirm the legality of the foundation to the authorities on presentation of the declaration of foundation. As with the "Deposited Foundation", a foundation created by a fiduciary, guarantees the founder and the participants a high degree of privacy. If the foundation is created by a fiduciary, the identity of the founder is not made public. All the rights of the founder are outwardly exercised by the fiduciary.

foundations but become legal when the declaration of foundation is issued. A declaration is to be deposited at the Land and Public Registry Office within 30 days of foundation.

Government Supervision of Charitable Foundations

Charitable foundations, which are created for the purpose of serving the public good, must be registered in the Public Register. In cases where the declaration of foundation does not provide sufficient clarity as to

whether the foundation is charitable or private in character, the law prescribes that the foundation will be deemed charitable. The wishes of the founder, as set out in the declaration of foundation, are the deciding factors. The foundation laws define "following the public interest" as an activity which will benefit the general public in a charitable, religious, scientific, humanitarian, social, sporting or ecological way, even if this only involves a limited circle of people.

Liechtenstein Foundations Serve the Planning, Preservation and Protection of Family Assets for Generations

Charitable foundations are under the surveillance of a supervisory body which has the power of control over the administration and use of foundation capital. Supervision is carried out by an independent auditor who prepares an annual report and presents it to the Liechtenstein supervisory authorities.

Attractive Taxation on Foundations

Under the new tax laws, which came into force on 1st January 2011, founda-

tions benefit from attractive taxation. Foundations, which are set up for the administration of a person's private assets and are not involved in business activities, can qualify as a private asset structure and are only subject to a minimum capital gains tax of 1,200 Swiss Francs (see also <http://www.seeger.li/Service/Publikationen/NeuesSteuergesetzNewTaxLaw/tabid/111/language/en-US/Default.aspx>).

Summary of Services

- International financial, tax and business consulting
- Incorporation, domiciling and administration of domestic and foreign companies
- Consulting in international trade and financial transactions
- Legal representation in civil, administrative and criminal matters
- Investment consulting and investment management
- Trust administration
- Family office services
- Bookkeeping and auditing
- Intellectual property, licensing and franchising
- Legal opinions

ADVOKATURBÜRO

Dr. iur. et lic. oec. Norbert Seeger · Attorney-at-Law
Vaduz · Principality of Liechtenstein

F.L.TRENDS

International economic recession, a strong Swiss Franc, when compared to other currencies, and uncertainties on the financial market took their toll on the economic development in the Principality of Liechtenstein in 2012.

From January to August 2012, goods exported by Liechtenstein companies – excluding those to Switzerland – increased slightly by 0.8%, as compared to the previous year. Exports to America increased strongly whereas goods exported to Europe and Asia declined.

In the first half of 2012 the three major Liechtenstein banks announced a 5.3 billion Swiss Franc net-intake of new money. Administered customer assets saw a 3.2% increase by the middle of 2012, when compared to the previous year, and reached a total of 178.2 billion Francs.

According to VAT data, profits from sales of the 25 largest companies in various branches fell by 2% in the first half of 2012. The turnover of industrial companies fell by 4%, as compared to the previous year. Financial service companies recorded a 9% increase in turnover in the first half of the year.

(Source: Office of Statistics)