Liechtenstein Companies

Liechtenstein offers a variety of corporate structures for individuals and companies. Their most important features and benefits are summarised in the following article.

By Johannes Matt
Owner Tremaco Trust Enterprise
Eschen, Liechtenstein

Foundations

Clients who are familiar with civil law like to establish foundations for asset planning. It is a simple and efficient way to preserve assets and transfer them to heirs. The foundation is a flexible instrument that may serve as the holder of various assets such as investment portfolios, insurance policies, real estate, ships, works of art or participations.

The minimum capital required for a foundation is 30,000 francs. The assets contributed to the foundation become the foundation's property. Only the foundation's assets are liable for its debts. Information about the beneficial founder, the foundation's assets, the beneficiaries and their rights are not available to the public.

The main executive organ of the foundation is the foundation board, which is in charge of managing the foundation and its assets in the best interest of the beneficiaries and according to the founder's wishes. The founder may reserve in the foundation deed the issuing of an additional foundation deed (by-laws) in which the beneficiaries (specifically or in a way determinable by objective characteristic) or the class of beneficiaries will be designated. If the founder has reserved the right to amend the foundation deed, he may at any time amend at will the foundation's purpose and thus also the beneficiaries, inc1uding the ultimate beneficiary. The contents of the additional foundation deed (by-laws) are strictly confidential.

The founder enjoys extensive discretion in choosing the beneficiaries and determining their benefits. Beneficiaries can be children, partners, friends, relatives or charitable organisations. The founder may also appoint himself as primary beneficiary. A foundation exists for an indefinite period of time.

Trusts

The trust takes the position of a "trust settlement" or "family trust" in Anglo-Saxon legal systems. People who have their private or business interests in common-law areas prefer using the trust settlement, which is well-known there, as opposed to the rather unfamiliar foundation. In contrast to the other legal forms, the trust does not have its own legal personality.

A trustee is a person who receives assets (trust fund) from another person (settlor) subject to the obligation to manage them in trust in the trustee's own name but for the benefit of one or more third parties (beneficiaries) with effect against anyone. Trusts may be used for a wide range of objects, such as charitable, family, social, cultural or similar purposes.

The trust comes into existence by a trust deed being drawn up. That deed regulates the relation between settlor, beneficiaries and trustee and additional details of the trust, and for that reason it is usually quite extensive. Should something not have been regulated, recourse can be made to the law.

Trusts must either be entered in the commercial register or the trust deed must be deposited there. When a trust is submitted for registration, only the date of formation, the name of the trust, the duration and the trustee must be made public. It is not necessary to submit the trust deed. Accordingly, trusts entered in the commercial register are more discrete than trusts whose trust deed is deposited.

The trust fund may, for example, consist of bank credit balances, securities, insurance policies, licensing rights, trademark rights, participations or real estate. Anyone can be a settlor, legal entities included. The domicile or place of residence is of no importance. Following the formation of the trust, the settlor may no longer dispose of the trust fund formerly held by him. Only the trustee is allowed to dispose of it. However, he has to follow the provisions of the trust deed exactly. The trustee may delegate asset management to banks or third parties.

The beneficiaries of the trust are the persons to whom a benefit from the trust is due. The settlor may himself be among the beneficiaries, and even the trustee, as long as he is not the exclusive beneficiary. Other persons eligible as beneficiaries are individuals, legal entities or other institutions.

A trust deed may be amended, if it so provides. The trust deed also states the term of the trust. As opposed to Anglo-Saxon jurisdictions (rule against perpetuity), that term is expressly allowed to be unlimited under the law of the Principality of Liechtenstein. The power to terminate the trust is normally due to the trustee.

Establishments

The establishment ("Anstalt") is a legal form that only exists in Liechtenstein. It is used to structure assets or participations in enterprises. Due to its flexibility, it is versatile in its use.

The Liechtenstein establishment is not identical with the public-law institutions called "Anstalt" in other countries. The Liechtenstein establishment is a legal form of private law. It is a legal entity. The establishment's founder or his successor (the holder of the founder's rights) is the supreme corporate body. The founder's rights can be inherited or transferred by assignment inter vivos.

The minimum capital is 30,000 francs. Only the establishment's assets are liable for its debts. The beneficiaries are appointed in by-laws. If there are no by-laws, it is assumed by law that the holder of the founder's rights is himself the beneficiary. The holder of the founder's rights appoints the board of directors, gives formal approval to its actions, effects any changes to the articles and resolves upon the establishment's dissolution. In addition he has the power to issue by-laws and to resolve upon the beneficiaries and their benefits. The company is managed by the board of directors, which represents the establishment towards the outside and is authorised to sign for it. The version "with founder's rights" is the most frequently found type of establishment.

The establishment "without founder's rights" is another version. It works similar to a foundation. The powers of the supreme corporate body (holder of the founder's rights) are vested in the board of directors and there are no founder's rights. Accordingly, there is no supervision of the board of directors by a supreme corporate body. It is however possible to appoint a protector for that purpose.

The establishment with "expiring founder's rights" is a mixture of the establishment with founder's rights and the establishment without founder's rights. In this version, the founder's rights that have come into existence when the company was formed, will expire at a certain point in time determined in the by-laws, such as upon the death of the holder of the founder's rights. That way, this type of establishment obtains a character similar to a foundation at a predetermined time.

The appointment of auditors is compulsory for all three types, if the establishment conducts a commercial trade or if its articles allow it to do so. The books of account are audited by the auditors and the establishment must submit its annual accounts to the tax administration. If no commercial trade is conducted, there is only an obligation to submit a minimal statement to the authorities.

Trust enterprises (Trust reg.)

The trust enterprise, which is often called "trust reg.", has a structure similar to the establishment. A trust enterprise has a legal personality. Its will is manifested by the supreme corporate body, the settlor or his successor. The settlor's rights can be inherited or transferred inter vivos by assignment.

The trust enterprise is based on the trust articles, which are equivalent to the articles of association of other company forms. Registration in the commercial register is a requirement for the company to obtain its legal personality.

The minimum capital is 30,000 francs. Only the trust enterprise's assets are liable for its debts. The beneficiaries are appointed in by-laws by the settlor or his successor. If this has not been done, it is assumed by law that the settlor or his successor is himself the beneficiary. The trust enterprise is managed by the board of trustees. That board represents the trust enterprise towards the outside and is authorised to sign for it. This trust enterprise "with settlor's rights" is one way of structuring it.

Another form would be the trust enterprise "without settlor's rights", which is similar to a foundation. In this version, the powers of the supreme corporate body are vested in the board of trustees and there are no settlor's rights. Accordingly, there is no supervision of the board of trustees by a supreme corporate body. It is however possible to appoint a protector for that purpose.

The trust enterprise with "expiring settlor's rights" is a mixture of the trust enterprise with settlor's rights and the trust enterprise without settlor's rights. In this version, the settlor's rights that have come into existence when the company was formed, will expire at a certain point in time determined in the by-laws, such as upon the death of the holder of the settlor's rights. This way, this type of trust enterprise obtains a character similar to a foundation at a predetermined time.

The appointment of auditors is compulsory if the trust enterprise conducts a commercial trade or if its trust articles allow it to do so. The books of account are audited by the auditors and the trust enterprise must submit its annual accounts to the tax administration. If no commercial trade is conducted, there is only an obligation to submit a minimal statement to the authorities.

Public limited companies

The rules for the company limited by shares are similar to those for the legal form with the same name used abroad. It is also suitable for small companies or family companies. Liechtenstein and Swiss company law are closely related. Therefore Swiss law is often used when questions concerning implementation arise.

The company limited by shares has a legal personality. Only the company's assets are liable for the company's debts. The minimum capital is 50,000 francs, divided into bearer shares or registered shares of any denomination. A capital increase from the profits of paid-in shares may be carried out by giving free shares to shareholders without consideration.

The general meeting of shareholders is the supreme corporate body of the company. The auditors and the board of directors are appointed by the general meeting, which also gives formal approval to the annual accounts and to the actions of the executive organs. Also, the shareholders may amend the articles of association or decide to liquidate the company in a general meeting. The shareholders have the right to take part in general meetings and to receive a dividend according to the course of business.

The board of directors manages the company, represents it towards the outside and is authorised to sign for it. It is compulsory that the auditors examine the books of account each year and submit a report to the general meeting.

tremaco@tremaco.li
www.tremaco.li