

## Liechtenstein Foundations

# Attractive Instruments 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.



*By Dr. Norbert Seeger  
Attorney-at-Law, Vaduz*

The 1926 Personal and Company Law has been the cornerstone 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 family foundations to administer assets and descendants' estates, or as holding foundations which participate in active companies. Contrary to a company, a 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 a family's estate for

generations to come, or as a holding foundation 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 1 April 2009.

### **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 law, 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 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 or her assets in a foundation for generations to come, because the assets deposited may not be distributed amongst the 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 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 of 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

## 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 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 lawmakers 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. Foreign judgments are not executed in Liechtenstein, which entails that an action against a foundation must be brought before a Liechtenstein court.

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 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 law defines "following the public interest" as activities 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.

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

## 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 law, 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.

### Attractive taxation

Under the new tax laws, which came into force on 1 January 2011, foundations 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 private asset structures and are only subject to a minimum capital gains tax of 1,200 francs (see also <http://www.seeger.li/Service/Publikationen/NeuesSteuergesetzNewTaxLaw/tabid/111/language/en-US/Default.aspx>).

*admin@seeger.li*  
*www.seeger.li*