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The renaissance of the Liechtenstein establishment, and trends in legislation

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For more than five years, Liechtenstein's government has been working on a revision of the Liechtenstein Foundation Law.

Diametrically opposite opinions of the country's professionals and lawyers delayed this task for years. It seems now that the trend is to keep the Foundation Law as flexible as it was, taking into account modern trends of recent court decisions and codifying missing regulations.

However, due to these unknowns, many professionals choose the Liechtenstein establishment (in its hybrid Foundation incarnation) as an alternative.

An establishment is a legal company, formed under private law with a legal personality of its own, and as such exists only under Liechtenstein law. It should not be confused with the Liechtenstein public law concept of an institution or establishment, which has a public law character and is subject not to private law but to the law of public authorities.

The available hybrid types of establishment are so varied that they take account of every business requirement. The object of the establishment might be the operation of a trading or manufacturing company, or of a trade pursued on a commercial basis. The purpose of an establishment might also be the investment and management of funds, or the holding of participations or other rights.

Purpose of an establishment

The purpose of an establishment has to be defined in its articles.

In contrast to the Foundation, and to the huge advantage of the establishment, commercial activities can be undertaken. In practice, establishments are one of the following: (i) commercial; (ii) non-commercial; (iii) holding; (iv) non-profit-making/charitable; (v) public law; (vi) ecclesiastical; (vii) pure family; or (viii) mixed family.

Hybrid types

Company limited by shares

An establishment can be organized in a form similar to that of a company limited by shares, and accordingly the capital of an establishment can be divided into shares. If so, the establishment

will have a general assembly, and the benefit is distributed to the holders of the founders' rights, as equivalent to shareholders.

Foundation

An establishment can be organised in a similar way to a foundation.

However, in this case the establishment does not have any owners, and is thus designated as an establishment without founders' rights.

Beneficiaries

Establishment beneficiaries are construed as being those persons who receive some present or future advantage from the foundation, according to the statutes or byelaws. This is irrespective of whether this is a share in the yield or of the actual assets of the foundation or both; nor does it matter whether there is a claim to this or not.

The beneficial interest is usually defined not in the statutes but in a separate regulation or byelaw, which are as binding as the statutes themselves. However, they are not deposited at the public register, and are accordingly not accessible for third persons.

The beneficial interest can be subject to certain conditions, limited in time or associated with an obligation or similar restrictions.

The beneficial interest can be alienated, assigned or bequeathed, or burdened with limited conditional rights. However, the statutes, regulations or byelaws can exclude these possibilities of disposition – and, indeed, this is what is usually done in practice.

Capital

The minimum capital of an establishment is CHF30,000. When the capital is divided into shares, the minimum capital required rises to CHF50,000.

Founder

An establishment can be founded by natural or legal persons, Liechtenstein citizens or aliens. Only one founder is required. Upon the formation of an establishment, the founder acquires certain rights concerning the bodies of the company, which are designated as founders' rights. Because a Liechtenstein Fiduciary Trust Company is usually entrusted to set up the establishment, such trust company tend to be the first holder of the founder's rights. They then transfer these rights to the clients by way of a deed of cession. In most cases the documents do not mention the name to which the rights are transferred. Such a document is only deed of evidence, and not a share certificate.

Founders' rights

The bearer of the founders' rights constitutes the supreme body of the establishment, similar to the general assembly of a company lim-

ited by shares and enjoying similar rights. The owner (or owners) of the founders' rights, as the supreme organ of the establishment, therefore controls the special-purpose fund incorporated in the establishment.

Founders' rights can be ceded or otherwise transferred and bequeathed, but they cannot be pledged or otherwise encumbered.

Taxation

Onshore establishments are taxed at a rate of 7.5% to 20% of their worldwide income, and can take advantage of the double-tax treaty with Austria.

Offshore establishments, meanwhile, are taxed at a rate of 0.1% of their capital and reserves. However, there is a minimum tax of CHF1000, payable in advance.

As long as the capital of the establishment is not divided into shares, no coupon tax has to be paid if distributions are made.

Outlook

The establishment is a suitable vehicle for asset protection, succession planning and commercial activities. The establishment can be tailored to the needs of the client like no other legal entity – not even the Liechtenstein foundation.

Should Liechtenstein ever change the Foundation Law for the worse, there will be no need to leave the Liechtenstein jurisdiction. Liechtenstein law allows the conversion of a foundation into an establishment without initiating winding-up proceedings by means of a document which has to comply with the law on establishments.

In the future, many clients will use the family or mixed family establishment from the beginning, and will profit from its flexibility.

Trends in Liechtenstein legislation

The law on asset managers

On December 30 2005 the new law on asset managers was published to comply with European legislation. Asset management had until that time been governed by relevant provisions in the law on trustees and the banking law. Now, it is regulated in a separate legal act – one of the first, if not the first – such act in Europe.

It is a modern law, but it limits the activities of trustees. Previously, trust companies sometime offered asset management services as well as trustee services. Because of professional liability duties this was not a wise move, but still practised often. By introducing this law, a new profession was introduced in Liechtenstein: asset managers.

The main cornerstones of the law are (i) the quality of the services to be offered; and (ii) professional secrecy. Additional key matters include the duty to inform the client about the asset manager, financial instruments and strategies, risks and fees and additional costs.

The new law will further strengthen Liechtenstein as a financial centre.

Threatening court decision for asset managers

A recent Swiss court decision, applicable in Liechtenstein because of its similar legislation, could pose a real threat to asset managers, trustees, lawyers and banks. The Swiss court ruled that all kickbacks from banks, asset managers and so on belong to the principal. No one can waive their rights on those kickbacks in a legally effective way unless they know the precise amount they are waiving. In most cases, the principal was informed about potential kickbacks in the general terms and conditions of the asset management contract, but according to the Swiss court, this is no longer sufficient.

Assuming that up to one-third of an asset manager's fees are kickbacks (including the finding fee), such reclaimable kickbacks could cause huge problems for most professionals. In Switzerland the principals can claim 10 year kickbacks, compared to five years in Liechtenstein, depending on the circumstances. Some banks in Switzerland have already offered to give information about the kickback to any principal. Some law firms are already advertising their services in this area, and offering class-action lawsuits.

Other new laws

Briefly, the following new laws might be of some interest:

- The Law on Insurance Agency, which regulates the terms and conditions under which someone can act as an insurance agent.
- The Law on Investment Companies, which regulates the organization and business activities of investment companies and fund managers. It protects the interest of the investors, and should secure confidence in the Liechtenstein financial sector.
- The Decree on Investment Companies, which is based on the Law on Investment Companies and regulates in detail the rights and duties of investment companies.

It should be mentioned that Liechtenstein law is absolutely compliant with European and international standards, and is now widely used for structuring international businesses. It also interesting to note that lawyers from many other European countries are moving into Liechtenstein.

Corporate and commercial

Recommended firms

Tier 1

Dr Dr Batliner & Dr Gasser
Marxer & Partner
Walch & Schurti

Tier 2

Law Office Harry Gstöhl & Partner
Law Firm Holzhaacker
Müller & Partner

Tier 3

Wanger Advokatur

Tier 4

Batliner Wanger Batliner
Seeger Frick & Partner
Batliner & Konrad

Dr Dr Batliner & Dr Gasser

Having been present in Liechtenstein for over half a century, Dr Dr Batliner & Dr Gasser continue to have a strong team in Vaduz. There are three partners and six associates at the firm that can offer a large scope of financial law services in German, French, Spanish and English. All nine lawyers work on banking and project finance deals, with slightly smaller representation in capital markets, insolvency & restructuring and mergers & acquisitions.

Dr Dr Batliner & Dr Gasser is conscious of the globalization of the legal market, and is proud of its ongoing partnership with west Austrian firm Simma Rechtsanwälte Partnerschaft.

International respect for the firm is further proved by Dr Dr Batliner & Dr Gasser's regular collaboration with the likes of Simmons & Simmons, Baker & McKenzie and Clifford Chance.

Johannes Gasser is once again highlighted as "a very good lawyer" by the market. One commentator keenly emphasised that Gasser is "strong in corporate law and also has great litigation skills which helps him be a better consultant." Similarly, Peter Monauni is again regarded as a leader: "he is the intellectual head of the office and is a very good lawyer," said one peer.

With such praise of its staff by the market, it is easy to see why Dr Dr Batliner & Dr Gasser is considered a favourite by many Liechtenstein banks, trustees, trust companies, developers, private individuals and insurance companies.

Leading lawyers

Johannes Gasser
Peter Monauni

Key contact partners

Herbert Batliner
Johannes Gasser
Patrick Schürmann

Marxer & Partner

Marxer & Partner retains its top-tier position in this year's rankings due to the "great reputation" it has among peers and clients. The firm has been a constant presence in the Liechtenstein market for over 80 years, making it the oldest firm in the country. It is also the largest. The firm's 13 partners, 17 associates and permanent consultant can offer an impressive array of commercial legal advice.

Marxer & Partner has continued its partnership expansion this year with the appointments of Michael Grabher and Jesús Cortés in 2006. These additions will surely add to the experience of the existing partners, including the 2005 intake, Oliver Nesensohn and Wolfgang Rabanser, who have already been well received by their competitors. The market has also singled out associate Stefan Wenaweser as being "excellent" and "most experienced despite his young age."

In November 2005, the firm was given "Golden Pyramid" status by the German national newspapers *Die Welt* and *Welt am Sonntag* for "exemplary legal service and detailed consultation". In total, there were only 28 winners from all areas of the economy across the entire German-speaking area, so Marxer & Partner definitely deserves congratulations.

Leading lawyers

Johannes Burger
Bernhard Lorenz
Peter Marxer

Key contact partner

Johannes Burger

Walch & Schurti

2006 marks the 15 year anniversary of Walch & Schurti's presence in Liechtenstein and the firm can further celebrate another year in the top tier of the rankings. There are five partners and five associates at the firm who can offer advice on, among other things, financial law, business & banking law, litigation, planning law, trusts and estates matters and insurance law in German, French and English.

Nicolas Werner Reithner was only promoted to partner last year, but it has not taken long for his competitors to sit up and take notice. One commentator has great faith in Reithner's work and believes that he is "on his way" to becoming a leading lawyer.

Leading lawyers

Andreas Schurti
Ernst Walch

Key contact partners

Andreas Schurti
Ernst Walch

Law Office Harry Gstöhl & Partner

Law Office Harry Gstöhl & Partner is a smaller firm than many of its competitors. However, the two partners and three associates that make up the operation work efficiently to more than justify the firm's tier two ranking. The general consensus of the market is that the firm is correctly positioned due to the quality of its output. In a wider context, Law Office Harry Gstöhl commands more respect due to its membership of the Employment Law Alliance and the International Lawyer's Network.

Once again, commentators have emphasised how important it is that the well respected and hugely experienced Harry Gstöhl is at the helm. However, Egon Hug has attracted attention as "he leaves a good impression and is the most seen lawyer" from the office. Such recognition of an associate indicates a bright and successful future for Hug and the firm.

Leading lawyer

Harry Gstöhl

Key contact partner

Sabine Mohr-Egger

Law Firm Holzacker

Since his recent split with Thomas Struth, Gerhard Holzacker has set up his own office where he is the only lawyer. Fears that this may result in a dip in form have been quelled by the majority of market opinion. One international client has been very impressed with Holzacker this year, noting, "he is very knowledgeable and quick ... he understands problems easily and is pragmatic in his approach in solving them." Another pundit confirmed that Holzacker "should remain in tier two as he still does a lot of corporate and commercial work." There is also opinion that Holzacker was always the most dominant partner in his previous working relationship, which was confirmed by his constant status as leading lawyer.

With regard to clients, Holzacker has worked for large international banks, huge telecommunication companies and well respected international law firms in the past. Law Firm Holzacker has continued this success by representing respectable clients such as Crédit Suisse Trust, Skandia Insurance, Lord Abbett Investment Funds and Ernst & Young. Importantly, client feedback notes that "Holzacker keeps his clients up to date and his communication is very good." It will be extremely interesting to chart his new firm's progress over the coming year.

Leading lawyer

Gerhard Holzacker

Key contact partner

Gerhard Holzacker

Müller & Partner

Senior partner Wolfgang Müller founded this firm in 1998 and since then Müller & Partner has advised multiple financial institutions, major banks, trading companies and even the Liechtenstein government regarding the preparation of legislation. This, combined with the general opinion that Müller is "greatly experienced", is why the firm has retained its second tier status in the rankings after its debut last year.

Müller & Partner focuses most of its efforts on commercial litigation and corporate and commercial work, although it also advises on banking, finance, taxation, and insolvency matters. Interestingly, one market source predicts that, when the time comes to step down, Wolfgang Müller "has found a valuable and good replacement for himself in Roland Müller." In association

with Robert Neudorfer, it looks as though the long-term future and continued success of Müller & Partner is in safe hands.

Leading lawyer

Wolfgang Müller

Key contact partner

Robert Neudorfer

Wanger Advokatur

Wanger Advokatur is an internationally respected member of global legal networks Globalaw, Interlegal, the International Business Law Consortium, the International Trademark Association and the Licensing Executives Society. The commonly held view in Liechtenstein is that Wanger Advokatur has great pedigree from the position it has held in the market over the years, although market reports that recently Wanger himself has been more visible on trust management matters than on pure legal work.

However, the competence of the firm's two partners and two associates is beyond doubt. And, unlike many rival firms in Liechtenstein, the firm has genuine international reach through presences in Austria, Belgium, Switzerland, Brazil, America, Germany and China. Such diversity is echoed in the Liechtenstein office, where services are offered in German, French and English.

Key contact partner

Markus Wille

Other notable firms

Batliner Wanger Batliner has been recommended by multiple sources this year, being described as "quite active" and "quite strong in corporate and commercial law." The firm offers a wide selection of services including mergers & acquisitions, insurance law, trust law and contract. Batliner Wanger Batliner was established in 2002 and comprises four partners and one associate.

Another firm with a "good reputation" is **Seeger Frick & Partner**. The firm has expanded recently and is "doing lots of corporate and commercial work." There are five lawyers in the team, including former Liechtenstein prime minister Mario Frick and former judge Wolfgang Seeger who is, in the words of one peer, "a very capable lawyer... he works well on insolvency cases." **Batliner & Konrad** are also recognised by the market, chiefly for the "brilliant" Andreas Batliner who is heralded as being "very fair... he has large experience, is smart, hardworking and tells the clients where they are objectively."

"One of the best known lawyers in Liechtenstein", Peter Wolff, set up his own firm in 2004. **Wolff Gstöhl & Partner** is "very active in the corporate and commercial sector". Wolff is a former president of the Liechtenstein parliament and regarded as a "top lawyer" with a "very good and long standing reputation." The market predicts the new firm's entry into the rankings in the near future.