

Liechtenstein

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Markus H Wanger Wanger Advokaturbüro Vaduz

Foundations and trusts are the cornerstones of Liechtenstein's wealth, and of its corporate and financial sector. More than 50,000 foundations and trusts are deposited or registered with the public registry, and billions of assets are held in the name of foundations and trusts with Liechtenstein banks, and even more with banks abroad.

Foundations (Article 552-570 PGR)

The foundation is an independent special purpose fund, which has legal personality and is separate from the private assets of the settlor. The minimum capital of a foundation is SFr30,000 (\$23,345).

The formation of a foundation takes place through the dedication of a fund (the assets of the foundation) for a certain specified purpose. The settlor is usually completely free to choose the purpose. Thus, under Liechtenstein law, in contrast to most other states of continental Europe, even the so-called maintenance foundation is permissible, the exclusive purpose of which is the payment of a family's living expenses. One can even find a sole purpose foundation.

Article 552 PGR lists various ecclesiastical, family and non-profit purposes, although in practice, the family foundation (in its various forms) is the most common, its purpose being to safeguard, manage and conserve the funds of a family, and to maintain and support family members and charitable activities.

A foundation can only carry on a commercial trade when it serves the attainment of its non-economic purpose, or where the nature and extent of the holding of interests requires a commercial enterprise. Pursuant to Article 192, paragraph 6 PGR, it is only in this case that an audit board needs to be appointed, and a balance sheet audited by it that is submitted annually to Liechtenstein's tax authority.

Foundations that do not carry on a trade pursued on a commercial basis are not required to submit a balance sheet.

As a rule, the foundation document contains only a general description of the purpose, whereas the nature and extent of the beneficiary rights, or the exact designation of the beneficiaries, are specified in the bylaws or internal regulations. This

assures the flexibility of the foundation and the anonymity of the beneficiaries, because these do not have to be deposited with the public registry.

A foundation normally only attains the status of a legal personality when it is entered in the public register, but this tends to be the exception rather than the rule. Most foundations (which are ecclesiastical, pure and mixed family foundations, and foundations whose beneficiaries are specified or can be specified) are not entered in the public register, because they acquire legal personality as soon as they are formed. These foundations only need to be deposited with the public register, to guarantee a high degree of confidentiality.

Through the provision made in Liechtenstein law for the settlor to reserve the right to cancel the foundation or to amend the statutes, the settlor retains the unrestricted right of financial disposal over the assets of the foundation and its earnings.

Foundations that are acting neither as a commercially active holding nor as charitable foundation, and therefore do not have to have audited balance sheets, are taxed at a rate of 0.1% of their capital and reserves. The minimum tax is SFr1,000, which has to be paid in advance.

For foundations whose assets and reserves together exceed SFr2 million, capital tax is reduced to 0.75%, and for those whose assets plus reserves exceed SFr10 million, it is 0.5% (Article 85 (1) Tax Act in the wording of LGBl 1996 no 88).

Trusts (Article 897-932 PGR)

Uniquely in continental Europe, Liechtenstein has defined the institution of the trust in law, following the English common law model (Article 897-932 PGR).

A trust is formed when a third party (the donor) assigns a trust property to a trustee and imposes on the latter the obligation to administer or use this trust property in their own name in relation to any person, in favour of one or more beneficiaries. It corresponds to the English law private express trust.

However, unlike the English law trust, Liechtenstein law neither prohibits the accumulation of earnings, nor does it have a rule against perpetuities in the sense of a limitation to a certain time. Pure special purpose trusts are also allowed.

Liechtenstein liberal law also allows the formation of

trusts according to foreign (that is, English or US) law. Pursuant to Article 931 PGR, the foreign trust regulations to be applied must be expressly listed in the trust document. The ability to form a trust in accordance with the familiar law of their native country is especially convenient for foreign settlers, because already-prepared statutory provisions can simply be adopted.

A trust is not usually registered with the public registry, but simply deposited with it. In this case, a third party gets information from the public registry only when proving a justified interest, such as where it is a potential beneficiary or a protector.

A trust is taxed at the rate of 0.1% of the assets, with a minimum tax of SFr1,000 a year payable in advance.

Differences between foundations and trusts

The settlement of the trust is a legal act, by means of which a person (the settlor) transfers assets to another person (the trustee). The trustee will manage or dispose of the assets in favour of the beneficiaries. The settlor can be one of the beneficiaries.

The trustee is often a natural person, a firm or a trust company engaged professionally in the business of administering companies, foundations or trusts or managing assets. They are legally under the ownership of the entrusted trustee, but subject to the provisions of the trust deed or to the guidelines of a letter of intent.

Setting up a Liechtenstein foundation, registering the foundation with the public registry or depositing the foundation documents, grants legal personality to the Liechtenstein foundation. As a result, the foundation can purchase and hold assets of any kind and can enter into any agreements in its own name. Unlike trusts, it is the foundation itself that owns the assets, which are managed by the foundation council. The assets of a trust are under the ownership of the trustee. The foundation council has the function and duty to fulfil the objects and purposes of a foundation.

The foundation can be used in a legal structure, or as a vehicle for the ownership of any assets, whether they be moveable or real estate.

In the trust system, the settlor transfers the assets to the trustees, which are based on executed formal documents.

The control and administration of assets given in trust is in the sole power of the trustee, whereas in the foundation this power of control and administration is in the hands of the foundation council. However, the Liechtenstein foundation as the common law trust benefits from the system of a protector or advisory board, which can protect the interests of the settlor and the beneficiaries and can advise the foundation council. All discretionary foundations should have such a protector.

Trusts allow the appointment of one or more trustees without a minimum or maximum, as do foundations.

Trusts can be set up under the provisions of foreign trust law, whereas foundations can only be set up under Liechtenstein law.

Foundations provide provisions limiting legal claims against the settlor, and are therefore often used for asset protection.

Foundations and trusts are often used to substitute wills. However, trusts and foundations can be challenged by heirs, if their home country grants such rights.

Trusts are commonly named after the settlor, and are used to execute commercial transactions such as purchases of real estate, the administration of assets, investments and entering into international agreements.

Foundations are widely used as a discrete vehicle to protect the interests of the settlor, and can be formed as family foundations, charitable or ecclesiastical foundations, or as a mixed-purpose foundation, and are often also used as holding entities.

One of the main advantages of a foundation is that a foundation is not subject to the rules against perpetuities and accumulations. These rules would apply to Liechtenstein trusts set up under foreign law, but not for Liechtenstein law trusts.

Corporate and commercial

Recommended firms

Tier 1

Dr Dr Batliner & Dr Gasser

Marxer & Partner

Walch & Schurti

Tier 2

Law Office Harry Gstöhl & Partner

Holzhaecker & Struth

Müller & Partner

Wanger Advokaturbüro

Tier 3

Ritter & Wohlwend Advokaturbüro

Dr Dr Batliner & Dr Gasser

Having had a presence in the Liechtenstein market for over 50 years, Dr Dr Batliner & Dr Gasser is an excellent choice for a wide range of corporate, commercial and financial law advice, particularly in relation to matters of financial litigation. The firm has worked on many major matters, often working alongside international firms such as Clifford Chance, Herbert Smith, Simmons & Simmons and Baker & McKenzie.

Given its reputation, Dr Dr Batliner & Dr Gasser attracts some of the most desirable clients on the international market, including Swiss banks, local banks and trustees, insurance companies and private investors. Indeed, in one high-profile case, the firm received a royal appointment by the prince of Liechtenstein to act as his legal counsel on defending constitutional matters. The firm was further honoured with being the only lawyers appointed by the prince to the selection panel for judges in 2004.

Among the strong team of 11 lawyers, Herbert Batliner and Johannes Gasser both receive special mention from the market as “good lawyers” for their expertise and high-quality advice. Other commentators singled out Dr Peter Monauni as a “very experienced litigator” that has developed a “big reputation” in the Liechtenstein courts over the past 40 years. The firm will surely benefit from the recent arrival of new partner, Wolfgang

Brandstetter, a professor at the Institute for Criminal Law at the University of Vienna.

Leading lawyers

Herbert Batliner
Johannes Gasser
Peter Monauni

Key contact partners

Herbert Batliner
Johannes Gasser

Marxer & Partner

The biggest and oldest law firm in Liechtenstein, Marxer & Partner is certainly one of the country's leading and most prominent firms. The firm has 11 partners and 13 associates, who are supported by over 50 support staff. The eminent Dr Peter Marxer – a former party leader in the Liechtenstein parliament and the son of Dr Dr Ludwig Marxer (who founded the firm in June 1925) – has a “good reputation for his publications”. The market also praises Johannes Burger and Bernhard Lorenz, a practitioner cited as an “extraordinarily competent lawyer with a good knowledge of the law,” who is “truly someone to talk to”.

Marxer & Partner offers a wide range of commercial legal advice, with a particular focus on general corporate, banking, real estate, labour and tax work. The firm is the exclusive Liechtenstein member of the professional legal network, Lex Mundi; its international connections are boosted further as a result of alliances with Fundationsanstalt, Domar Treuhand-und Verwaltungsanstalt and Protec Trust Management Est.

Leading lawyers

Johannes Burger
Bernhard Lorenz
Peter Marxer

Key contact partner

Johannes Burger

Walch & Schurti

A “good” law firm that is “active” in the market, Walch & Schurti is the “largest firm and among the most active in the corporate and commercial practice area”. One of the firm's strengths lies in retaining excellent staff. Three of its associates – Alexander Appel, Colin Horne and Nicolas Werner Reithner – were made up to partner this year.

The well-respected team of 11 lawyers is headed by the distinguished Ernst Walch, the former president of the Liechtenstein parliament and deputy chairman of the National Bank, and Andreas Schurti, who the market describes as a lawyer with a “good reputation”. The firm is a member of the Association of European Lawyers and the State Capital Global Law Firm Group.

Walch & Schurti's financial background has given it excellent credentials in financial law advice, with particular expertise in corporate, banking and insurance. An impressive 70% of the

firm's clients are overseas, including several international banks, and on some deals the firm collaborates with international law firms such as Allen & Overy and Freshfields Bruckhaus Deringer.

Leading lawyers

Andreas Schurti
Ernst Walch

Key contact partners

Andreas Schurti
Ernst Walch

Law Office Harry Gstöhl & Partner

The top-quality team of Law Office Harry Gstöhl & Partner, consisting of Harry Gstöhl, Sabine Mohr-Egger, Egon Hug and Andrea Hofmann, has been strengthened with the recent hire of new associate, Alexandra Sohm. The market describes Gstöhl as a practitioner with a “good reputation,” and he is singled out among the team as the lawyer with the greatest profile. His standing rests chiefly on his impressive credentials, being the former president of Liechtenstein's High Court of Administration, Supreme Constitutional Court, and National Board of Examination for Lawyers and Trustees.

Law Office Harry Gstöhl & Partner advises on a wide range of practice areas, including corporate, banking and bankruptcy law. The firm continues to maintain international connections through its membership of the International Lawyers Network and the Employment Law Alliance.

Leading lawyer

Harry Gstöhl

Key contact partner

Sabine Mohr-Egger

Holzacker & Struth

Gerhard Holzacker is highly regarded by his international clients, who include major investment banks, insurance companies, telecommunications operations and electricity conglomerates. The firm is particularly well thought of in the market for its expertise in commercial litigation, although, of course, it is capable of providing advice on the full range of corporate and financial law matters such as banking, insolvency, real estate and intellectual property.

Holzacker & Struth continues to represent the US federal government for corporate litigation cases. The firm has recently been advising the government of Trinidad and Tobago regarding international bidding fraud, as well as representing a Scandinavian insurance company on litigation issues.

Leading lawyer

Gerhard Holzacker

Key contact partner

Gerhard Holzacker

Müller & Partner

The law office of Müller & Partner is recommended for the first time in the *IFLR1000* this year, in response to the unanimous praise received from the market. The firm is a “premier corporate and commercial litigation firm” with a “really good reputation” that is “doing good work.” The firm was founded in 1997, and has four partners – including the well-respected Wolfgang Müller, who previously headed Marxer & Partner’s litigation department. Contemporaries describe Müller as “very experienced” and as having “a very good reputation in litigation.”

Müller & Partner provides a broad range of legal services, with particular expertise in litigation and an ever-expanding corporate and commercial practice. The firm boasts a portfolio of clients, over half of which are foreign banks, financial institutions and insurance companies. The firm is a member of the professional network, the European Lawyers Group.

Leading lawyer

Wolfgang Müller

Key contact

Robert Neudoref

Wanger Advokaturbüro

Wanger Advokaturbüro is an excellent choice for international financial law advice in Liechtenstein, given its solid global legal network, with representatives and alliances in Austria, Belgium, Switzerland, Brazil and Israel. The firm has recently expanded its network further after opening an associate office in China and after forging an alliance with Abu-Ghazaleh Legal Services in Jordan. The Wanger Group is also the first law firm in Liechtenstein to have a representative office at the heart of the financial hub in the US, New York’s Wall Street. The firm is a member of several professional associations, including Interlegal, Globalaw, the International Business Law Consortium and the Swiss-Chinese Chamber of Commerce.

Although some commentators remarked that name partner Markus Wanger is no longer as active as he used to be, and that the firm has been handed over to the younger generation of lawyers, the fact remains that managing partner Markus Wille, along with the rest of the team, continues to provide advice on a broad range of legal matters, with specialist knowledge of trusts and intellectual property. It is estimated that over 90% of the firm’s work is for international clients; one recent matter saw the firm advise soft drink manufacturer Red Bull on trademark issues.

Irrespective of the activity or otherwise of Dr Wanger, the firm’s reputation greatly benefits from his name. Wanger is the honorary consul to Hungary in Liechtenstein, a member of Liechtenstein’s examination board for lawyers, and the managing director of the fiduciary company, Industrie-und Finanzkontor.

Key contact partner

Markus Wille

Ritter & Wohlwend Advokaturbüro

Commentators describe the “well-connected” Ritter & Wohlwend Advokaturbüro as a firm with a “good standing” and “a steady reputation” in Liechtenstein. It is on recommendations such as these that the firm makes its first appearance in the *IFLR1000* rankings this year.

The team of “capable and good lawyers” is managed by partners Peter Ritter and Helmut Wohlwend. The firm has developed a close and healthy relationship with one of the three leading trust service companies in Liechtenstein.

Key contact partners

Peter Ritter

Helmut Wohlwend