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Private Wealth

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LIECHTENSTEIN

Law and Practice

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1. Tax

1.1 Tax Regimes

General Principles

The Liechtenstein tax system is based on a general wealth tax with supplementary income tax for individuals and an income tax for legal entities. The decisive factor for the tax liability in Liechtenstein is usually the place of residence, for both individuals and legal entities.Liechtenstein nationals are taxed on their worldwide income and assets if resident in Liechtenstein.

Gift taxes and inheritance taxes have not existed in Liechtenstein since January 2011. There is still, however, a legal obligation to disclose the transfer or receipt of gifts or an inheritance exceeding the value of CHF10,000. Individuals are obliged to list all endowments and benefits given or received during the taxable year in their tax declaration.

When selling property in Liechtenstein a property gains tax, is incurred, this tax applies to every individual or legal entity selling their property. The property gains tax is always to be paid by the seller of the property. The tax burden consists of the calculated tax amount plus a surcharge of 200% of this calculated amount.

Taxation of Natural Persons

For any natural person resident in Liechtenstein, a wealth tax and income tax apply. The wealth tax applies to all kinds of assets, including movable and immovable assets. Income tax is calculated based on the taxable net income.

With regard to income and profit taxation, Liechtenstein recognises the taxation of liquid funds and monetary gains. However, many proceeds are not subject to profit and income tax, but to wealth tax (no double taxation). For unlimited taxpayers, taxable income does not include, inter alia, rental and leasing income from property located abroad.

Net taxable income for unlimited taxpayers does not include, inter alia, capital gains obtained from inheritance, legacies or gifts, or deposits in foundations or institutions similar to foundations. Limited taxpayers may claim such deductions in determining their taxable net income only to the extent that they are able to deduct domestic income in accordance with provisions stated in the Tax Act.

There are two different types of taxes, the state tax and the municipal tax. The state tax rate is calculated based on taxable income, including assets converted into income and ranges from 1% for income of CHF15,000 to a maximum of 8% for income of more than CHF200,000. In addition to the state tax, each municipality imposes a municipal surcharge equal to a certain percentage of the state tax amount. The municipal supplement ranges between 150% and 200% of the state tax amount. The calculations differ for single parents and married couples/registered partners. In these cases, different tax levels and higher tax-free amounts are applicable.

Taxation of Legal Entities

Legal persons are subject to profit tax at the rate of 12.5% of their taxable net income. The basis of the assessment is the reported net proceeds of the entity. However, dividends and return on capital as well as the returns of business premises outside of Liechtenstein and income from real estate are not taken into consideration for the calculation. The minimum income tax amounts to CHF1,800 a year. No tax applies for entities with an average net income of less than CHF500,000 over the preceding three years.

Private asset structures and asset structures without personality, mainly trusts and foundations, are not subject to income tax but only to the minimum income tax of CHF1,800.

Under certain circumstances, entities may request an exemption from their tax liability. This requires that the entity pursues exclusively and irrevocably charitable purposes and has no intention of ever making profits. For such entities, no profit tax applies. However, in case no other tax applies to assets dedicated to the entity, a tax of 3.5% of the taxable value of the financial contribution applies.

Furthermore, legal entities that exclusively manage private assets in pursuit of that purpose and carry on no commercial activity may apply to be qualified as a Private Asset Structure (*Privatvermögensstruktur* or PVS), which guarantees very favourable tax treatment. Legal entities that receive the status of PVS are only subject to the minimum income tax in the amount of CHF1,800, irrespective of their assets and income. In addition to the requirement of not performing any economic activity, the law requires fulfilment of the following prerequisites for classification of legal persons as a PVS:

- their stocks or shares are not permitted to be placed publicly and may not be traded on a stock exchange;
- they are not allowed to advertise for any shareholders or investors, nor receive from the latter, or other third parties, payments or reimbursements of costs for their non-commercial activities;
- only natural persons and the PVS, or intermediaries acting on their behalf, are allowed to be involved therein and/or preferred; and
- the articles must show that they are subject to the restrictions that apply to a PVS.

1.2 Stability of the Estate and Transfer Tax Laws

In general, estate and transfer taxes have not existed under Liechtenstein law since 2011. However, the dedication tax of 3.5 % applies to each amount dedicated to a charitable legal entity or a legal entity that has been exempted from tax upon request.

Even despite the COVID-19 situation, Liechtenstein still has a positive financial position due to the fiscal surplus of 2019, which has ensured sufficient reserves in the COVID-19 situation so far. Therefore, no increase in government revenue in response to the economic uncertainty is planned. Due to the crisis, however, the government decided that no default interest on the late payment of VAT will be charged until 31 December 2020. An extension of the payment period or payment by instalments may also be applied for.

1.3 Transparency and Increased Global Reporting

As early as 2009, Liechtenstein committed itself to implementing the exchange of information in tax matters in accordance with OECD standards. In 2014, Liechtenstein ratified the corresponding multilateral agreement with 50 other states to take effect from 1 January 2016. Liechtenstein is thus one of the early adopters of this agreement and exchanged information on taxpayers for the first time in 2017 with all the other states that ratified the Common Reporting Standard (CRS).

On 16 May 2014, the Principality of Liechtenstein also signed the Foreign Account Tax Compliance Act (FATCA) Model 1 agreement and a Memorandum of Understanding (MoU) with the USA. This FATCA agreement aims to ensure the taxation of all accounts held abroad by US taxpayers in the USA. According to the agreement, Liechtenstein financial institutions are obliged to report information on the accounts of US persons to the tax administration. This information is then forwarded by the tax administration to the US tax authorities (IRS).

Furthermore, the Liechtenstein Tax Act contains a general anti-avoidance taxation provision. Legal or actual structures that appear inappropriate to their economic circumstances, and where the sole economic purpose consists in achieving tax advantages, shall be considered legally abusive if:

- the granting of this tax advantage would contradict the object and purpose of the Tax Act, and
- the taxpayer is unable to present any economic or other significant reason for the choice of this structure and the structure does not produce any separate economic consequences.

If an abuse is identified, taxes shall be levied on the basis on which they would have been levied if the legal structure had been appropriate to the economic events, facts and circumstances.

2. Succession

2.1 Cultural Considerations in Succession Planning

In Liechtenstein, individual family structures tend to be small but can in some cases be very extensive. Generally speaking, older generations are willing to turn over wealth and control to younger generations. For this purpose, in many cases an appropriate will is drawn up during a person's lifetime in order to avoid disputes after their death. Due to the various options of legal entities and the flexibility in their structure especially in regard to estate planning, Liechtenstein is also an attractive succession-planning domicile for families outside of Liechtenstein.

2.2 International Planning

Legal Entities and Planning Vehicles

The question of international planning arises particularly in the context of Liechtenstein foundations and trusts. Economic founders and beneficiaries originate from, and spread, all over the world. Especially with regard to cross-border distributions, national provisions, such as tax obligations, must be taken into account. The same, however, is relevant in the context of any other legal entity where shareholders and recipients of dividends and revenues are spread over the world. The consequences in each case strongly depend on the nature of the relevant legal entity and its statutes and contracts.

Inheritance Law

Although the European Succession Regulation (Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012) was not incorporated in the EEA agreement, the regulation does have an impact on Liechtenstein law in certain cases (eg, on central issues of asset protection concerning questions of adjustment or crediting under inheritance law). The regulation must also be considered by Liechtenstein judges when determining the substantive law applicable to lawsuits, such as claims for alleged violation of compulsory portions. This is due to the fact, that Liechtenstein's International Private Law Act (IPRG) provides a so-called cumulative-link with regard to the determination of the applicable law. Whether a forced heir may assert rights against third parties who have received assets from the deceased during the deceased's lifetime shall be determined, in the first instance, in accordance with the law of the jurisdiction to which the legal succession is subject. Moreover, making such demands or raising such a claim is only permissible if this is also permissible under the law applicable to the acquisition process.

2.3 Forced Heirship Laws

In general, individuals in Liechtenstein have the freedom of disposition over their estate upon death. Nonetheless, there are

"protected heirs" (*Pflichtteilsberechtigte*) and, therefore, a forced heirship regime.

If a compulsory portion is violated, Liechtenstein succession law allows forced heirs to claim back gifts or legacies that were given to third parties or to other heirs (eg, due to an endowment during the testator's lifetime). Therefore, forced heirs may file a clawback claim to receive the balance of their compulsory portion if they receive less than their compulsory share in the estate.

The applicability of the Liechtenstein (forced) heirship regime, however, depends on the applicable succession law. According to the Liechtenstein IPRG, legal succession is determined in accordance with the personal statute of the deceased at the time of death. Whether a forced heir can assert rights against third parties who have received assets from the deceased during the deceased's lifetime, shall be determined according to the law of the jurisdiction to which the legal succession is subject.

If a testator was a Liechtenstein national, in general, Liechtenstein succession law is applicable. Where there is no (valid) will, Liechtenstein provides a legal order of succession. The legal order and portion is largely congruent with the persons entitled to a compulsory portion so that forced heirship claims are not typically a topic in such a case.

Waiver and Exclusion of Forced Heirship

In some rare cases, even the forced heir's portion can be reduced to half of the actual portion (eg, if at no time a customary relationship existed between the testator and the heir). Heirs can even be completely excluded from their right to inherit in some very rare cases.

There is also the possibility that heirs waive their right to their compulsory portion by a contract (*Pflichtteilsverzicht*).

2.4 Marital Property

According to Liechtenstein law, in general there is a separation of marital property during marriage. Therefore, spouses can transfer their own property without the consent of the other spouse, except their marital home. A spouse may also only terminate a tenancy agreement, sell the marital house or apartment, or restrict rights to the family's residential premises by other legal transactions with the express written consent of the other spouse. However, the concept of separation of goods is not mandatory, which means that spouses may enter into a marital agreement for "joint property".

In any case, in the event of a divorce, the concept of separation of goods will no longer apply and any increase in assets generated during the marriage must be divided between the spouses. Agreements are allowed in regard to a restricted number of facts, which are conclusively listed in the Liechtenstein Marriage Act (*Ehegesetz*). The division of marital property cannot generally be waived upfront except regarding very specific assets, such as corporate shares. Such waiver agreements need to be set up in writing and the signatures must be authenticated.

2.5 Transfer of Property

Under Liechtenstein law, in general, no distinction is made between assets transferred during a person's lifetime or at their death.

Since there is no inheritance or gift tax in Liechtenstein, no special costs need to be expected if property is transferred either in the form of a gift or by way of inheritance. However, when selling property, the property gains tax may apply.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

As there is no inheritance or gift tax in Liechtenstein, the transfer of assets to younger generations is usually tax-free. However, for heirs residing outside of Liechtenstein, national tax obligation provisions could be relevant. The set-up of a foundation or trust in their favour could provide an appropriate solution in such cases.

2.7 Transfer of Assets: Digital Assets

Transfer of Digital Data

There are no special provisions under Liechtenstein law concerning succession with regard to digital assets. If the deceased has failed to take precautions to deal with the digital assets, relatives can often only turn to operators with a death certificate and a certificate of inheritance (*Einantwortungsbeschluss*) and hope that these operators will comply and provide the access data. Data protection provisions do not apply anymore if the data subject is deceased, which in this case is more favourable for the heirs.

Blockchain and Token

On 1 January 2020, the Act on Tokens and VT Service Providers (the TVTG) came into force in Liechtenstein. It states that tokens generated or emitted by a trusted technology (VT) service provider based or resident in Liechtenstein, or if the applicability of Liechtenstein law was agreed upon by the parties, are to be qualified as domestic assets. A token can represent any kind of right and, due to its qualification as asset, it will be included in the estate of a deceased person. If the token or the key is held by a VT-service provider, it has to be passed on to the executor of the estate. Therefore, it should be borne in mind that private keys over tokens cannot be recovered if they are actually lost. For example, tokenised rights to assets are lost to the heirs if the testator has not deposited backup copies of

their private keys or if the testator has not made the private keys accessible in any other way after death. However, the TVTG provides for VT services providers as custodians who can store either the token or the private keys on behalf of clients in order to guarantee greater security or to ensure easier disposal within the scope of services. In this context, an heir may address the custodian in order to assert their claims under inheritance law.

3. Trusts, Foundations and Similar Entities

3.1 Types of Trusts, Foundations or Similar Entities

In Liechtenstein, all types of company are governed by the Liechtenstein Persons and Companies Act (PGR). Liechtenstein was one of the first jurisdictions incorporating the foundation into company law. Private-benefit foundations, therefore, are of particular importance in Liechtenstein, as they have been established for many years.

Furthermore, Liechtenstein is the first and only continental European jurisdiction to adopt the trust system based on the Anglo-Saxon model so far. The possibility of establishing trusts has existed since 1926, thus trust law also has a long tradition of legal certainty.

Liechtenstein also offers a very special form of company, namely the establishment (*Anstalt*) which is unique and not comparable with other types of companies from other jurisdictions. It is characterised by a particularly high degree of flexibility, demonstrated, for example, by the fact that according to the founder's will, an establishment can be organised similarly to a foundation or to a stock corporation.

As a member of the EEA, various anti-money laundering provisions have been established in Liechtenstein within the last few years. In order to implement the latest provisions of the 5th Anti-Money Laundering Regulation, in 2020, Liechtenstein has established a register of beneficial owners. Currently, only controlling bodies are registered and access is still very restricted in comparison to the registers of neighbouring countries. Thus, a certain level of discretion can still be maintained, when planning within the country.

3.2 Recognition of Trusts

Trusts have been established in Liechtenstein legislation for almost 100 years based on the Anglo-Saxon system. Liechtenstein therefore has had its own trust structure for many years already operating as part of its jurisdiction. Liechtenstein has also ratified the Hague Convention on the Law Applicable to Trusts, with effect from 1 April 2006. As a result, Liechtenstein also recognises all foreign trusts if they are organised in accordance with the Hague Convention.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

In general, Liechtenstein nationals are taxed on their worldwide income and assets if they are resident in Liechtenstein. The subject matter of wealth tax is their entire movable and immovable property, whereas the assets of entities without personality are also attributed to the participating shareholders.

For Liechtenstein residents, the distributions of a foundation or trust that are received as beneficiary are usually counted as income and therefore are subject to income tax (Article 14, paragraph 2, littera k of the Liechtenstein Tax Act). However, if the distributions are made on a regular basis, or in the case of an irrevocable foundation, upon application distributions can be taxed as assets. This is upon the request of one beneficiary or several beneficiaries and with the approval of the body responsible for distributions. In this case, the irrevocable structure has to fulfil the income tax obligation instead of the beneficiaries. Also, remunerations received for serving as fiduciary are subject to income tax.

If the beneficiary is a legal entity, however, the distribution is not calculated as part of the taxable net profit.

The assets of revocable foundations and trusts and similar structures are attributed to the founder, who is taxed on them. No tax applies if the foundation or trust is irrevocable.

3.4 Exercising Control over Irrevocable Planning Vehicles

Liechtenstein foundation law provides that the right of revocation and the right of amendment, as classic rights of the founder, must be reserved in the statutes. These constitute highly personal rights, which can only be exercised by the founder. They cannot be inherited or transferred.

The right of revocation and the right of amendment must be distinguished from each other. The founder may renounce the right of revocation in the statutes and, at the same time, reserve the right of amendment. However, once the right of revocation has been renounced, it cannot be reinstated afterwards by exercising the right of amendment. Even if only the right of amendment is reserved, according to case law no complete property transfer has taken place and the assets are therefore still assigned to the founder from a tax point of view.

The law also provides for the possibility of the founder reserving the right of amendment to the foundation board in the statutes. This right of amendment can be directed towards the purpose

of the foundation as well as towards other contents. However, changes to the foundation's purpose by the foundation board may only be carried out if the purpose has become unattainable, illegal, unreasonable, or if the circumstances have changed significantly.

Other than this, the foundation board may amend other contents if this possibility is explicitly provided for in the articles of foundation. The foundation board is always bound to the purpose of the foundation and can only exercise this right if there is an objectively justified reason.

Similarly, trust law stipulates the possibility of the trustor reserving the right to amend or revoke the trust. The particular advantage is that a right of amendment can also be reserved to a third party, such as a protector.

4. Family Business Planning

4.1 Asset Protection

Liechtenstein is considered to be an asset protection-friendly jurisdiction. It is basically the cradle of private foundation law in Europe, meaning that foundations are not only recognised, but are a big part of everyday legal dealings in Liechtenstein. The Liechtenstein foundation is by far the most popular vehicle for asset protection planning in Liechtenstein, followed by the trust.

Liechtenstein Foundations

The Liechtenstein foundation is formed by endowing assets for the benefit of a specific purpose. Upon formation, the foundation receives its own legal personality, forming a legally independent entity and therefore existing separately from the founder's assets and fate. In contrast to a company, a foundation does not have any owners or shareholders, but only beneficiaries or prospective beneficiaries who will enjoy the foundation's income and/or assets. As a result of its legal independence, the foundation's assets remain outside the asset spheres of the founder, the beneficiaries and the prospective beneficiaries unless the founder has reserved the right of revocation.

Purpose

In contrast to foundations in most other jurisdictions, Liechtenstein foundations are not limited to common-benefit purposes but may also have private-benefit purposes or mixed purposes. The so-called family foundation is an often-selected version. In such a foundation, the assets are endowed to the interest or welfare of a family or other group of persons. The founder is free in formulating the foundation's purpose, provided that the purpose is not immoral or illegal. The foundation's minimum capital is CHF30,000. It may also be paid in euros or US dollars. After the foundation has been set up, further assets may be endowed to it. Only the foundation's assets are liable to the foundation's creditors. The founder, the foundation's governing bodies and the beneficiaries are not personally liable. Moreover, there is no legal obligation to make additional contributions to the foundation.

Statutes

The foundation's statutes (articles) define the governing bodies and the manner in which they operate. The foundation board is often the foundation's sole and supreme governing body. It consists of a minimum of two individuals and/or legal entities. At least one member of the board of the foundation should be authorised to manage and represent the foundation and must hold a suitable licence. The board of the foundation manages the foundation's assets in accordance with the statutes, the supplementary foundation deed (by-laws) and the regulations (if available). The asset management should be subject to the diligence of a prudent businessperson. The foundation's statutes may also include other governing bodies such as advisory councils, protectors or curators.

Beneficiaries

It is possible to define beneficiaries and prospective beneficiaries of the foundation in the declaration of establishment, the statutes or the supplementary foundation deed (by-law). The founder is essentially free in regulating these matters. With regard to family foundations, the statutes may determine that the beneficiaries' creditors must not deprive them of their rights by way of execution or bankruptcy. In practice, beneficiaries and prospective beneficiaries are usually appointed in the supplementary foundation deed. This deed does not have to be submitted to the commercial register, which ensures confidentiality. It is possible to edit the type and amount of beneficial rights at any time if this has been expressly provided for in the foundation's statutes or the supplementary foundation deed.

Registration

Private-benefit foundations are, in general, not registered in the commercial register but only "deposited". Register extracts are only available to third parties in the case of registered or common-benefit foundations. The entry in the commercial register contains (i) denomination, (ii) date of formation, (iii) object, (iv) statutory capital, (v) name, and (vi) the first names and domiciles of the board of the foundation and of the representatives, as well as of the external auditor. It is therefore not necessary to present the by-laws when registering. Since 2020 controlling bodies have had to be registered in the newly established register. However, the access to the register is restricted and therefore only possible under certain circumstances.

Restrictions
Liechtenstein law does not contain any restrictions as to the possibility of the settlor/founder also being a beneficiary. Furthermore, there are no restrictions as to the possibility of the settlor/founder being a board member. The settlor/founder, as well as the beneficiaries, can be members of the board without any restrictions. The founder can reserve certain powers to influence the foundation for themselves (eg, the right to revoke the foundation or to edit the foundation documents).

Trusts and Anstalts
Besides the foundation, both the trust as well as the *Anstalt* are popular vehicles for asset protection.

4.2 Succession Planning
Entrepreneurs who have created particularly large companies and wealth often decide to transfer their company shares or wealth to a foundation. In this way, it is possible for the entrepreneurs to preserve their life's work beyond death and protect it from fragmentation by their descendants. By doing so, the entrepreneur places the responsibility of managing the company into the hands of others, who have the task of running it in the way intended by the founder. The descendants are often "only" granted a position as beneficiaries.

4.3 Transfer of Partial Interest
As no inheritance and gift tax has applied in Liechtenstein since 1 January 2011, partial interests in an entity may always be transferred tax-free.

5. Wealth Disputes

5.1 Trends Driving Disputes
Wealth disputes – such as those regarding estates, trusts, foundations or similar entities – are often triggered by probate proceedings. Most of these disputes are settled through litigation in state courts.

Recent developments have shown that including arbitration clauses in relevant foundation or trust documents could be useful, as such wealth disputes could then potentially be settled by an arbitral tribunal. However, not every legal dispute is arbitrable, especially those relating to supervisory courts.

5.2 Mechanism for Compensation
Liechtenstein law provides different options for compensating aggrieved parties in wealth disputes.

Depending on the merits of the claim and the form of the dispute, a state court or an arbitration court could, for instance, award damages to aggrieved parties if the relevant requirements are met.

With regard to foundations, a party may, for instance, be granted access to relevant files of the foundation, or members of the board of trustees may have to resign. It is also possible that an aggrieved party could demand beneficiary status. In addition, decisions of the foundation board could be annulled by the courts or contributions could be declared unlawful, so that they fall back into the estate of the deceased founder for example.

In regard to arbitral proceedings, Liechtenstein has been a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 5 November 2011.

6. Roles and Responsibilities of Fiduciaries

6.1 Prevalence of Corporate Fiduciaries
The use of corporate fiduciaries (trustees and trust companies as trust service providers) is prevalent in Liechtenstein. Corporate fiduciaries must be licensed by the Liechtenstein Financial Market Authority (FMA). This licence allows the fiduciary to provide either only restricted activities or extensive ones.

The profession of corporate fiduciary itself is subject to high standards of conduct. In general, trustees and trust companies must carry out their activities carefully, honestly and professionally in the best interests of their clients, in accordance with the rules of professional conduct and must maintain the reputation of the profession through their conduct. They are obliged to maintain secrecy regarding all matters entrusted to them and other facts disclosed to them in their professional capacity as trustees, and regarding which secrecy is in the interest of their clients. Statutory provisions on the obligation to provide evidence or information to the criminal courts or authorities remain reserved.

The requirement of "trustworthiness" must be proven at the time of approval of the licence. This requirement is not satisfied if the applicant has been finally sentenced to more than three months of imprisonment or to a fine of more than 180 times the daily net income rate, for an offence or crime related to their professional activity.

In consideration of all circumstances, the FMA may rule that the requirement of trustworthiness has not been met, if:

- the applicant has been the subject of an unsuccessful attachment order in the five years prior to the application;
- there has been a legally binding rejection of the applicant for bankruptcy on account of that applicant's lack of assets to cover costs within the last five years prior to filing the application;
- legally enforceable bankruptcy proceedings have been opened in respect of the applicant in the five years preceding the filing of the application;
- the applicant has been the subject of a final supervisory decision in respect of a repeated or serious breach of a guideline/decree of financial market supervision;
- a final disciplinary decision has been taken against the applicant;
- criminal proceedings involving a legally valid indictment have been initiated against the applicant in connection with their professional activity; or
- there is a legally enforceable judgment against the applicant on account of an offence or crime.

While the Liechtenstein Chamber of Professional Trustees and Fiduciaries (*Treuhandkammer*) is responsible for the honour, reputation and rights of trustees as well as the supervision of their duties, the FMA supervises the due diligence obligations of trustees and trust companies.

6.2 Fiduciary Liabilities

Piercing the Corporate Veil

Liechtenstein is considered an asset protection-friendly jurisdiction. Nonetheless, Liechtenstein law does recognise the principle of "piercing the corporate veil" under certain circumstances. The separation principle (*Trennungsprinzip*) is applicable to Liechtenstein legal entities in general, and clearly separates the entity legally from the natural or legal entities controlling it. Under certain circumstances, however, the separation principle does not prevent the legal entity from being attributed to the shareholders and/or bodies and/or the controlling persons, and vice versa.

In very restricted circumstances, there is the possibility of piercing the corporate veil due to the misuse of a legal entity. There is no statute law regarding this matter; it is instead based on case law. However, the Liechtenstein Supreme Court is very strict with regard to piercing the corporate veil due to misuse.

Reversed Liability of Foundations and Trusts

The piercing of the corporate veil due to misuse of the legal entity in the case of a foundation is possible if a person acts as a de facto body, meaning exercising controlling functions, without being formally appointed. In the context of foundation law, the beneficial founder must therefore have formed the foundation with the intention of remaining in a position to dispose of the foundation's assets to their advantage and in their own interests, regardless of the foundation's purpose. The beneficial founder must have had the intention of misusing the legal entity from the outset by acting dishonestly or damaging another person's assets (for instance, when a foundation was intended from the beginning to circumvent the provisions of succession law).

Moreover, if a creditor intends to pierce the corporate veil to access the person behind the foundation, one of the following criteria must be met:

- the creditor must be in acute danger of suffering a loss in the amount of their claims against the foundation (eg, the foundation does not have any assets); and
- the creditor must have acted in good faith (ie, must not have known of the de facto body's intention to misuse the legal entity).

Apart from a misuse of a legal entity, there are also further circumstances, that permit the piercing of the corporate veil. Besides the possibility of piercing the corporate veil, the creditors of a corporation may, if the company does not have a claim, be compensated directly for any damage inflicted. Under certain circumstances, claims against the managing bodies of companies and of legal entities are then treated as equivalent to them (foundations). The managing bodies of a company, and the legal entities treated as equivalent to them, are liable to the company if they have caused damage to the company intentionally or through gross negligence. Furthermore, there has to be a causal relationship between the damage and a breach of duty by the bodies.

Moreover, if a trustee or member of the board of the foundation violates duties that result from their mandate and the general duties of care (eg, the business judgement rule or BJR), they could be held personally liable to the foundation.

In contrast to foundations, trusts do not have a separate legal personality. A trust consists of an accumulation of assets and liabilities, which form the trust estate. A trustee always has to act in accordance with the trust deed, the law and the BJR. If a trustee violates the duties (breach of trust), he or she is personally liable, with all their assets, to the settlor in accordance with Article 924 of the PGR or, if the settlor has died, to the beneficiary. Unless otherwise agreed, co-trustees are jointly and severally liable. This liability is of contractual nature.

6.3 Fiduciary Regulation

According to the Liechtenstein Trust Act, trustees must carry out their activities carefully, honestly and professionally in the best interest of their clients and in accordance with the rules of

professional conduct. Therefore, trustees and trust companies could be held liable if they act beyond the required standard of care, which encourages them to invest assets prudently.

The BJR shall be mentioned as a general guideline for the management and investment of assets. Trustees therefore act in conformity with their obligations if they make a decision based on appropriate information, free of conflicts of interest, and in good faith that the decision is in the best interests of the assets to be managed. The purpose of the BJR is to create a "liability-free core area" of entrepreneurial discretion in the business decisions of the acting person.

6.4 Fiduciary Investment

The investment strategies of a fiduciary are mainly guided by the purpose set out in the structures' statutes. This main guideline is supported by the professional obligations of the fiduciary, as well as by the provisions of the BJR.

7. Citizenship

7.1 Requirements for Domicile, Residency and Citizenship

Even though Liechtenstein is a member of the EEA and a signatory to the Schengen Agreement, special rules are applicable with respect to domicile/residency and citizenship due to its limited size.

Residency

The European free movement of persons (*Personenfreizügigkeit*) does not apply in Liechtenstein, which makes it more difficult to take up residency in this country.

There are different forms of residence permits. Liechtenstein distinguishes between short-term and long-term permits. A short-term permit allows the holder to stay in Liechtenstein, in employment, for up to one year. A long-term permit allows the individual to stay for more than one year, either employed or unemployed. These permits are generally limited to a period of five years for EEA and Swiss citizens, and to one year for nationals of third countries. The permit can be extended if certain legal prerequisites are met. The requirements for an employment permit are stricter for third-country nationals (eg, the requirements include an application by the employer and job qualifications). One of the requirements for a third-country national to obtain a non-employment permit is, for instance, that Liechtenstein is interested in offering the particular individual residence in the country.

Due to its EEA membership, Liechtenstein is required to issue a certain number of residence permits (direct issue). In addition to this direct issue, Liechtenstein also offers a biannual lottery for residence permits for EEA nationals only, which is similar to the US Green Card Lottery.

Citizenship

Regarding citizenship, there are six different ways to receive citizenship of Liechtenstein:

- by birth – children of a Liechtenstein mother or father are entitled to Liechtenstein citizenship;
- naturalisation (ordinary procedure) – the applicant must have been domiciled in Liechtenstein for ten years and must renounce his or her previous citizenship, the citizenship in this ordinary procedure is granted by the municipal citizens in a vote;
- naturalisation as a result of marriage – the applicant has to have been married to a Liechtenstein national for at least five years, have their place of residence in Liechtenstein and renounce their previous citizenship;
- naturalisation as a result of registered partnership – the applicant has to have been living in a registered partnership with a Liechtenstein national for at least five years, have their place of residence in Liechtenstein and renounce their previous citizenship;
- naturalisation as a result of long-term residence – this form of naturalisation requires regular residence in Liechtenstein for 30 years, whereby the years up to the age of 20 are counted twice; the applicant must also renounce their previous citizenship; or
- naturalisation due to statelessness – this method of naturalisation requires regular residence in Liechtenstein for five years.

Citizens from countries listed in Annex 1 of the Regulation (EU) 2018/1806 need a visa for entering and staying in Liechtenstein.

7.2 Expeditious Citizenship

The most expeditious way for an individual to obtain Liechtenstein citizenship is through marriage or a registered partnership with a Liechtenstein citizen.

8. Planning for Minors, Adults with Disabilities and Elders

8.1 Special Planning Mechanisms

No special planning mechanisms are foreseen in Liechtenstein law for minors or for adults with disabilities. However, anyone can be appointed as a beneficiary of a family foundation or trust. Under Liechtenstein law, an individual gains full legal capacity for holding and managing property at the age of 18 and restricted capacity at 14. Beforehand, either the parents or

the person in charge has to manage the minors' assets in their favour. For people not able to manage their affairs due to a disability, a special power of attorney is recognised. If needed, the court can also appoint a guardian to act on behalf of the person.

8.2 Appointment of Guardian

Appointing a guardian, conservator or a similar party requires a court proceeding as well as ongoing supervision by the court.

The persons entitled to custody (in particular, the parents) hold and manage a minor's property as the minor's representatives. They are obliged to manage the property prudently. They shall preserve and increase the value of the property, if possible. The law also states that it is the parents' duty to annually render an account to the court if the property includes real estate or shares of entities, or if the revenues provide financial support for the child. The court may free parents of this accounting duty if it considers the parents administer the property prudently.

8.3 Elder Law

Under Liechtenstein law, there are several possibilities for individuals to prepare financially for longer lives.

Pension provision consists of a mandatory portion, which is covered by the first pillar (1. *Säule*), as well as the public pension fund and the non-public pension funds in the second pillar (2. *Säule*). In addition, a voluntary private pension is possible (3. *Säule*). The options of the second and the third pillar therefore offer the possibility of structuring the overall provision according to one's needs.

Every Liechtenstein citizen must take out health insurance. In addition, "old-age and disability" insurance may also be taken into consideration.

Furthermore, descendants may have to assist their parents financially, which is a legal obligation provided by the Liechtenstein Civil Code (ABGB).

Regarding legal issues in cases of mental incapacity, it is advisable to implement a precautionary power of attorney (*Vorsorgevollmacht*) and to appoint children as guardians. In this way, one can avoid court-supervised care and/or property management in the case of mental incapacity.

9. Planning for Non-traditional Families

9.1 Children

Liechtenstein does not distinguish between legitimate and illegitimate children, even when it comes to succession-planning issues. Adopted children are treated like natural legitimate children in relation to their adoptive parents and siblings. However, they are not entitled to inherit from their adoptive parents' ancestors (grandparents and their descendants), since descendants shall be entitled to inherit from their natural ancestors, regardless of their adoption by third persons.

9.2 Same-Sex Marriage

Same-sex relationships are recognised by Liechtenstein law. This is through the legal institution of registered partnerships, whereas same-sex marriages are not recognised by law. Provisions on registered partnerships are laid down in the Registered Partnership Act of 16 March 2011 and the Registered Partnership Regulation of 16 August 2011. The status of such relationships is "in registered partnership". Registration of the partnership is applied for at the civil registry office. With respect to tax issues, registered partners are treated as spouses, meaning their property is added together for tax purposes. For succession purposes, registered partners are, again, subject to the same rules as spouses.

10. Charitable Planning

10.1 Charitable Giving

Charitable giving to legal entities and special asset endowments (such as trusts) domiciled in Liechtenstein, a member state of the EEA or Switzerland, which are exclusively and irrevocably exempt from tax liability for charitable purposes, are deductible. Cash benefits can be deducted up to a maximum of 10% of the taxable acquisition. The individual benefit must amount to at least CHF100.

10.2 Common Charitable Structures

Charities themselves are tax-exempt. Non-profit institutions, foundations or other non-profit organisations can apply for tax exemption if the main purpose of the organisation is not profit-oriented and it pursues charitable objectives.

Gasser Partner Attorneys at Law is an independent international law firm, primarily focused on the legal representation of its clients before courts and public authorities, as well as providing advice in all areas of the law. The firm advises and represents private clients as well as institutional clients – including banks, asset managers, fiduciary service providers, insurance companies, fund administrators and industrial companies – from Liechtenstein and abroad. It has specialists in every area of the law, enabling it to solve complex international cases efficiently. The private clients, asset and succession planning department of the practice deals with advising families and private clients (high net worth individuals, in particular) in asset and succession planning matters, and also in company reorganisation, including the management of issues arising in the succession of private companies. The firm's other key areas of practice relating to private wealth are arbitration and litigation; corporate, foundation and trust; commercial; real estate; and employment.

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