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Liechtenstein
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Law and Practice

Contributed by Gasser Partner Attorneys at Law

CONTENTS

Contributed by Gasser Partner Attorneys at Law ***Authors:*** Hannes Arnold, Johannes Gasser, Thomas Nigg

Gasser Partner Attorneys at Law is an international independent law firm, primarily focused on the legal representation of 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 from Liechtenstein and abroad – institutional clients include banks, asset managers, fiduciary service providers, insurance companies, fund administrators and industrial companies. Owing to Gasser Partner's size, expertise and excellent global links, the firm has specialists in every area of the law, enabling it to efficiently solve complex international cases. The Private Clients, Asset & Succession Planning department deals with advising families and private clients (in particular high-net-worth individuals) 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 & litigation; corporate, foundation & trust, commercial; real estate & employment;

Authors

Hannes Arnold is Senior Partner at Gasser Partner. His key practice areas are corporate law, business law, civil law & litigation, and real estate law. Hannes is a member of the Liechtenstein Bar Association, the International Association of Young Lawyers (AIJA), ELS European Law Society and the Liechtenstein Arbitration Association.

Johannes Gasser is Senior Partner at Gasser Partner. His key practice areas are private clients, corporate law, foundation & trust law, and litigation and arbitration. He is chairman of the Liechtenstein Arbitration Association and a member of the board of directors of the Liechtenstein Institute of Professional Trustees and Fiduciaries; he is also a member of the Liechtenstein Judiciary Selection Panel, the International Bar Association (IBA) and the International Association of Young Lawyers (AIJA). Johannes speaks German, English, French and Spanish.

Thomas Nigg is Senior Partner at Gasser Partner. His key practice areas are: corporate, foundation & trust law; civil law & law of succession; white-collar crime; commercial law; mergers & acquisitions. He is an ad hoc judge at Liechtenstein' s State Court, and a member of the Liechtenstein Bar Association, the International Association of Young Lawyers (AIJA), the International Bar Association (IBA) and the Liechtenstein Arbitration Association. His publishing credits include Getting the Deal through – Private Client (2018) and Asset Tracing and Recovery Review (2017).

1. Tax

1.1 Tax Regimes

The Liechtenstein tax system is based on a general wealth tax with supplementary income tax for individuals and an income tax for legal entities. Taxation usually depends upon residence; Liechtenstein nationals are taxed on their worldwide income and assets if they are resident in Liechtenstein.

The Liechtenstein Tax Act is primarily applicable to natural persons who have their domicile in Liechtenstein or who reside in Liechtenstein for the purpose of employment.

The general tax rate is calculated based on the taxable income including the assets converted into an income and is calculated as follows:

- less than CHF15,000 per annum: 0%;
- between CHF15,001 and CHF20,000: 1% (minus CHF150);
- between CHF20,001 and CHF40,000: 3% (minus CHF550);
- between CHF40,001 and CHF70,000: 4% (minus CHF950);
- between CHF70,001 and CHF100,000: 5% (minus CHF1,650);
- between CHF100,001 and CHF130,000: 6% (minus CHF2,650;
- between CHF130,001 and CHF160,000: 6.5% (minus CHF3,300);

- between CHF160,001 and CHF200,000: 7% (minus CHF4,100); and
- more than CHF200,000: 8% (minus CHF6,100).

Note that single parents and married couples/registered partners have different calculations. In these cases, different tax levels and higher tax-free amounts are applicable. 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% to 200% of the state tax amount.

In Liechtenstein, individuals are subject to income and wealth tax. Income tax is calculated based on the taxable net income. Wealth tax applies to all kinds of assets, including moveable and immoveable assets. 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, income from the management of foreign land used for agricultural and forestry purposes or rental and leasing income from property located abroad. Net taxable income does not include, inter alia, capital obtained from inheritance, legacy or gifts.

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

The gift tax and the inheritance tax were abolished in Liechtenstein with effect from 1 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 (see Article 96 of the Tax Act).

Liechtenstein recognises "property gains tax", which is paid by individuals selling the whole or parts of their domestic property. Specific regulations exist to avoid double taxation.

The seller always bears that kind of tax because he or she receives the final profit of the disposal. The tax burden consists of the calculated tax amount plus a surcharge of 200% of this calculated amount. Municipal tax is not applicable on real estate transactions.

A legal person liable to standard taxation is subject to income tax at 12.5% of the taxable net income. The minimum income tax amounts to CHF1,800. Liechtenstein trusts are subject to the minimum income tax.

All legal persons that manage, exclusively, private assets in pursuit of their purpose and carry on no commercial activity may be qualified as a Private Asset Structure (*Privatvermögensstruktur,* "PVS"), which guarantees a very favourable tax treatment: A legal person which has received the status of PVS is merely subject to the minimum income tax in the amount of CHF1,800 irrespective of its assets and income.

In addition to the requirement of not performing any economic activity, the law requires the fulfilment of the following additional prerequisites for classification of legal persons as a PVS:

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

On application, which must be made on the setting up of the legal person or before the start of the new tax year, the Liechtenstein revenue authorities will, if all preconditions prescribed by law are fulfilled, grant the status of a PVS.

1.2 Stability of the Estate and Transfer Tax Laws

Under Liechtenstein law, estate or transfer taxes do not exist.

1.3 Recent Developments or Forthcoming Regulatory Changes

Recently, the minimum corporate income tax rate of CHF1,200 has been raised to CHF1,800. This regulation applied for the first time to the tax assessment of 2017. Furthermore, the VAT rate has been adjusted as of 1 January 2018 and reduced from 8% to 7.7%.

In terms of tax and estate planning, it should be noted that Liechtenstein exchanges tax information with partner states within the framework of the Automatic Exchange of Information (AEOI).

1.4 Income Tax Planning

Liechtenstein offers several possibilities to efficiently structure private wealth. Irrevocable foundations and trusts may be used for asset protection and to reduce the taxable wealth of individuals. As mentioned above, legal persons may qualify as PVS, which guarantees a very favourable tax treatment.

Similarly, Liechtenstein offers an appealing lump-sum taxation based on expenditure for natural persons (see Article 30 et seq. of the Tax Act). This tax on expenditure is levied in lieu of property tax and income tax. The sum of all the individual's expenses forms the base for the lump sum taxation and is taxed at a uniform rate of 25%. Individuals subject to expense-based tax are not assessed (apart from local real estate, if applicable). This lump-sum taxation is subject to an application to the National Tax Administration.

Eligible applicants are those who:

- take up residence or establish their habitual place of abode in Liechtenstein for the first time, or after an absence from the country of at least ten years;
- do not hold Liechtenstein nationality;
- are not gainfully employed in Liechtenstein; and
- live off the income from their assets or other funds received from abroad.

1.5 Efforts to Address Real or Perceived Abuses/ Loopholes

By government declaration dated 14 November 2013, Liechtenstein affirmed its commitment to the applicable OECD standards of co-operation on tax matters. Based on this, Liechtenstein has become one of the early adopters of the automatic exchange of information.

The Liechtenstein Tax Act contains a general anti-avoidance taxation provision (see Article 3 of the Tax Act). Legal or actual structures that appear inappropriate to the financial circumstances, and the sole economic purpose of which consists of achieving tax advantages, shall be considered abusive if the granting of this tax advantage would be counter to the object and purpose of the Tax Act and if 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 as defined above is identified, the tax shall be levied on the basis on which it would have been levied if the legal structure had been appropriate to the economic events, facts and circumstances.

2. Succession

2.1 The Role of Notable Cultural Factors 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, an appropriate will is usually drawn up during a person's lifetime in order to avoid disputes after their death.

2.2 International Planning

The question of international planning is particularly important in connection with Liechtenstein foundations. Economic founders originate from all over the world and the corresponding national rules must be complied with.

Liechtenstein is not a member of the European Union (EU) but a member of the European Economic Area (EEA). Therefore, the European succession regulation is not directly applicable. Although it is not directly applicable in third countries, the regulation also has an impact on Liechtenstein, in particular on the central issue of asset protection. It therefore applies, for example, to questions of adjustment or crediting under inheritance law. In cases in which courts have to deal, for example, with lawsuits for alleged violation of the compulsory portion as a result of the establishment of Liechtenstein foundations, the regulation must also be observed by Liechtenstein judges when determining the substantive law applicable to such claims. Article 29 paragraph 5 of the Liechtenstein 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 his or her lifetime, is to be judged, in a first step, according to the law of the state 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

The Liechtenstein (forced) heirship regime depends on the applicable succession law. According to Article 29 of the Liechtenstein International Private Law Act ("IPRG"), the legal succession is judged in accordance with the personal statute of the deceased at the time of his or her death. Whether a forced heir can assert rights against third parties who have received assets from the deceased during his or her lifetime, is to be judged according to the law of the state to which the legal succession is subject. Making such demands or raising such a claim is only permissible if this is also permissible under the law applicable to the acquisition process (see Article 29 paragraph 5 of the IPRG).

If a testator was a Liechtenstein national, Liechtenstein succession law is applicable. Like in many other jurisdictions, individuals have the freedom of disposition over their estate upon death. Nonetheless, there are "protected heirs" (" *Pflichtteilsberechtigte* "). For instance, children and the spouse of the deceased are entitled to a compulsory portion of the estate. Depending on the specific constellation among these persons, the compulsory portion varies.

As far as such a compulsory portion is violated, Liechtenstein succession law allows forced heirs to claw back gifts or legacies that are given to third parties. 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.

In case there is no valid will, Liechtenstein provides a legal order of succession. The legal order is largely congruent with the persons entitled to a compulsory portion so that forced heirship claims are not a topic in such a case. The legal heirs are descendants, spouses or registered partners as well as the closest relatives. By law, there are four parentela. The first parentela contains the deceased's descendants. The children inherit in equal shares and predeceased children are represented by their own descendants. Alongside this first parentela, the spouse or registered partner is entitled to one-half of the heritage. If the deceased leaves no descendants, the second parentela is entitled to inherit. Those are the deceased's parents, who inherit in equal shares, or if one or both of them are predeceased, their descendants represent them. The spouse or registered partner is entitled to two-thirds of the heritage alongside this line, as well as alongside the third parentela, who are the grandparents and their descendants. The third parentela inherits from the deceased if there is no remaining second-parentela relative. If there are no third-parentela relatives, inheritance passes to the fourth parentela, the great-grandparents (who if predeceased are not represented by their descendants); however, alongside the fourth parentela, the spouse or registered partner is entitled to the whole inheritance. In other words, the great-grandparents do not inherit any of the estate if the deceased is survived by a spouse or a registered partner. If the deceased leaves no spouse or registered partner and no relative in any of the four parentelas, there are no entitled legal heirs. In this case the estate falls to the state.

2.4 Prenuptial and Postnuptial Agreements

As in many other jurisdictions, marital agreements are an important estate and wealth-planning tool. Liechtenstein recognises prenuptial and postnuptial agreements. Regarding specific factors and standards, the agreements have to be concluded in written form and the signatures must be authenticated. It is within the freedom of contract and therefore incumbent upon the parties if they want to conclude such marital agreements.

In practice, prenuptial agreements are used to agree on separation of property or joint property.

In general, a judge has to comply with such an agreement in case of a divorce, but is not obliged to do so in case one party is grossly disadvantaged.

Postnuptial agreements concerning care and alimentation of joint children, must be approved by the guardianship court.

An inheritance contract – ie, a contract by which an heir is appointed – may also be concluded between spouses. An inheritance contract is only valid if the formal requirements of last wills are met (see § 602 Civil Code).

2.5 Marital Property

According to Liechtenstein law, there is a separation of marital property. This is not mandatory law, which means that spouses could enter into a marital agreement for "joint property" (*"Gütergemeinschaft"*). However, in the event of a divorce, only an increase in assets generated during the marriage must be divided.

When it comes to the transfer of marital property, each spouse is allowed to transfer his or her own property without the consent of the other spouse as long as it is not the marital home. A spouse may only terminate a tenancy agreement, see the marital house or apartment or restrict the rights to the family's residential premises by other legal transactions with the express written consent of the other spouse.

2.6 Effect of Transfer of Property on the Cost Basis of Property Being Transferred

Under Liechtenstein law, no difference is made if assets are transferred during a person's lifetime or at their death. Since there is no inheritance or gift tax in Liechtenstein, no special costs have to be expected in this respect. However, one has to bear in mind that, regarding the transfer of real estate property, a real estate profit tax has to be paid.

2.7 Vehicles or Planning Mechanisms to Transfer Assets to Younger Generations Tax-Free

As there is no inheritance or gift tax, no special planning mechanisms have to be taken into consideration to help transfer assets to younger generations tax-free.

3. Trusts, Foundations and Similar Entities

3.1 Types of Trusts, Foundations, or Similar Entities

Liechtenstein's corporate law offers a wide range of legal forms for (international) tax and estate planning purposes.

Besides trusts, foundations and establishments, one can choose between, among others, limited liability companies or incorporated companies. The choice of legal form depends on many different factors and has to be decided on a case-by-case basis.

3.2 Possible Tax Consequences of Designation as a Fiduciary or a Beneficiary of a Foreign Trust, Foundation or Similar Entity

Even though Liechtenstein is not a common law jurisdiction, it was the first country in continental Europe that implemented the legal institute of trusts. Therefore, lawyers need to be familiar with Liechtenstein trust law and Anglo-Saxon trust law as well.

Trusts are well established and have a good and solid reputation in Liechtenstein. One can rely on detailed laws and judgments. Furthermore, Liechtenstein is a signatory to the Hague Trust Convention 1985 (The Hague Convention on the Law Applicable to trusts and on their Recognition).

Liechtenstein recognises the following "trusts":

- trust companies providing trustee services with a licence for extensive or restricted activities, granted by the Liechtenstein Financial Market Authority (FMA); and
- trusts and trust reg. – in case a trust is registered (trust reg.), it is considered a legal entity whereas a "classic" trust is not considered as an entity.

3.3 Structure of Irrevocable Trusts, Foundations or Similar Entities

Due to Liechtenstein's trustworthy legal status and its continuity, no changes have decreased or eliminated the benefits of planning with trusts, foundations or similar entities. In this context, it is noteworthy that the European Anti-Money-Laundering Directives have led to a tightening of the law regarding the identification of beneficiaries.

3.4 Possible Tax Consequences of a Beneficiary or the Donor of a Trust, Foundation or Similar Entity also Serving as a Fiduciary

As mentioned under section **1: Tax**, Liechtenstein nationals are taxed on their worldwide income and assets if they are resident in Liechtenstein. According to Article 9 of the Tax Act, the subject matter of income tax is the taxpayer's entire moveable and immoveable property whereas the assets of companies without personality are to be attributed to the participating shareholders and taxed by them together with their other assets. However, in this context, one has to distinguish between revocable and irrevocable foundations and trusts.

According to Article 9 (4) of the Tax Act, the assets of revocable foundations, special endowments of assets and establishments similar to foundations, are to be attributed to the founder and taxed by him or her.

At the request of one beneficiary or several beneficiaries and with the approval of the body responsible for distributions, the beneficial interests in irrevocable foundations, special endowments of assets and establishments similar to foundations are subject to income tax on their own. In this case, the irrevocable foundation, special endowment of assets or establishment similar to a foundation must fulfil the income tax obligation instead of the beneficiaries.

In addition, and pursuant to Article 48 of the Tax Act, distributions paid by foundations, establishments similar to foundations and special endowments of assets with legal personality are not included in the taxable net income for unlimited taxpayers.

3.5 Structures That Permit Future Changes and Allow Settlors to Retain Extensive Powers

The structure of irrevocable trusts, foundations or similar entities has to be decided on an individual basis. In this context, the balancing act between retaining powers and asset protection is influenced by the so-called "wealth sacrifice theory" (*"Vermögensopfertheorie"*), which is particularly important in connection with violations of the compulsory portion of the estate. Since the transfer of assets to a foundation can take place with the intention of misuse, the law itself provides for a period of two years within which such contributions or endowments can be challenged. The period of these two years starts when the donor has made his or her wealth sacrifice – ie, when he or she can no longer dispose of the endowed assets through reserved rights (for example, the right to amend the foundation's articles or to revoke the foundation). Accordingly, it is of great impact how the founder's rights are structured.

3.6 Tax Consequences of a Beneficiary Serving as a Fiduciary

There are no special planning opportunities arising from such circumstances. For tax reasons, one always has to look at the jurisdiction of the beneficiaries or the fiduciary.

With respect to Liechtenstein citizens, one has to distinguish between revocable and irrevocable foundations and trusts.

4. Family Business Planning

4.1 Most Popular Method for Asset Protection

One of the most common and popular family business succession planning strategies in Liechtenstein is to set up a family or holding foundation or to make up arrangements for succession during a person's lifetime through a valid will.

4.2 Transfer of Partial Interest in an Entity

Bearer and shareholder rights (securities such as shares, founder's rights, shares in limited liability companies, settlor's rights, etc,) in domestic and foreign legal entities that are not listed on a stock exchange have to be declared.

Therefore, securities that have a price quotation are valued at this price. Securities that are not quoted on a stock exchange as well as rights and claims not represented by securities, including benefits that can be determined in terms of value, are to be valued at fair market value, unless the taxpayer can prove that the nominal value does not correspond to the market value.

A specific transfer tax, during lifetime or at death, is not levied.

4.3 Most Popular Method for Asset Protection

Liechtenstein is considered to be an asset protection-friendly jurisdiction. Since Liechtenstein is basically the cradle of the private foundation law in Europe, foundations are recognised and are considered to be 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.

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, the foundation does not have any owners or shareholders but only beneficiaries or prospective beneficiaries to 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.

In contrast to most other jurisdictions, Liechtenstein foundations are not limited to common-benefit purposes but may also have private-benefit purposes or mixed purposes. In this context, the so-called "family foundation" is a version often selected. Here, the foundation's assets are endowed to the interests or welfare of a family or other group of persons. However, 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.

The foundation's governing bodies and the manner of managing it, are laid down in the foundation's statutes (articles). Often, the board of foundation is 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 foundation authorised to manage and represent the foundation must hold a suitable licence. The board of foundation manages the foundation's assets in accordance with the statutes, the supplementary foundation deed (by-laws), and the regulations (if any). The asset management is subject to the diligence of a prudent businessman. The foundation's statutes may provide for other governing bodies such as advisory councils, protectors, or curators.

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 normally appointed in the supplementary foundation deed. The supplementary foundation 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.

Private-benefit foundations are in general not registered in the commercial register but only "deposited". Register extracts are only available to third parties in case of registered or common-benefit foundations. The entry in the commercial register contains: denomination, date of formation, object, statutory capital, name, first name and domicile of the board of foundation and the representatives as well as the external auditor. It is therefore not necessary to present the by-laws when registering. For the time being, no register concerning founders or beneficiaries is maintained. However, under the 4th European Anti-Money-Laundering Directive (AMLD) there are corresponding requirements for such a register. It is a matter of time before such a register is implemented.

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

5. Wealth Disputes

5.1 Trends Driving Wealth Disputes

It is very common that wealth disputes – such as disputes regarding estates, trusts, foundations or similar entities – are triggered by probate proceedings. Most of these disputes are settled through litigation before state courts.

Recent developments have shown, however, that it could be useful to include arbitration clauses in relevant corporate documents. Only by including arbitration clauses in relevant foundation or trust documents can such wealth disputes be settled by an arbitral tribunal. Nevertheless, it should be borne in mind that not every legal dispute is arbitrable, especially with regard to supervisory courts.

5.2 Mechanism for Compensating Aggrieved Parties

Depending on the merits of the claim and the form of the dispute, a state court or an arbitral tribunal can award damages to aggrieved parties. For instance, it is possible that a party has to grant access to relevant files or members of the board of trustees may have to resign. It also might be possible that an aggrieved party demands a beneficiary status.

With respect to the upcoming legal field of arbitration and the award of damages, it is noteworthy that, since 5 November 2011, Liechtenstein is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

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 are required to be licensed by the Liechtenstein Financial Market Authority ("FMA"). The licence is required before commencing the business and ranges from a licence for restricted activities to a licence for extensive activities. Licence requirements can be found in the Liechtenstein Trustee Act 2013 ("TA") which is the legal basis for this profession.

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 (see Article 20 of the TA). They are obliged to maintain secrecy regarding all matters entrusted to them and the facts which otherwise become known to them in their professional capacity and whose secrecy is in the interest of their clients. However, the statutory provisions on the obligation to provide evidence or information to the criminal courts or authorities remain reserved.

It is noteworthy that 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 rate for an offence or a crime related to his or her 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 an applicant for bankruptcy on account of the 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 subject of a final supervisory decision in respect of a repeated or serious breach of a guideline/decree of the 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 his or her professional activity;
- there is a legally enforceable judgment against the applicant on account of an offence or crime.

The Liechtenstein Institute of Professional Trustees and Fiduciaries (*Treuhandkammer*) is responsible for the honour, the reputation and the rights of trustees. Moreover, it supervises their duties. The FMA, however, is responsible for the due diligence supervision of trustees and trust companies.

6.2 Piercing the Veil of a Trust or Legal Entity

Liechtenstein is considered to be an asset protection-friendly jurisdiction. However, Liechtenstein law does recognise the principle of "piercing the corporate veil" under certain circumstances. The separation principle (*Trennungsprinzip*) applicable to Liechtenstein legal entities leads to a clear legal separation between the entity and the natural and legal persons controlling it. However, it does not prevent that, under special circumstances, legally relevant facts and events on the level of the legal entity are attributed to the shareholders and/or bodies or the controlling persons and vice versa. For instance, there is the possibility of piercing the corporate veil in case of misuse of a legal entity. There is no statute law with regard to this matter. Instead it is based on case law. The

Liechtenstein Supreme Court is very restrictive with regard to piercing the corporate veil due to misuse. According to the Liechtenstein Supreme Court, piercing of the corporate veil is subject to an objective and a subjective component.

First of all, the existence of a de facto body is required for piercing the corporate veil due to misuse of the legal entity. Any person who exercises control functions without having been formally appointed as an organ of the entity is a de facto body. In the context of foundation law, this means that the beneficial founder must have formed the foundation with the intention of remaining in a position to dispose of the foundation's assets to his or her advantage and in his or her own interests, regardless of the foundation's purpose.

Secondly, when forming the foundation, the beneficial founder must from the outset have had the intention of misusing the legal form of the legal entity to act dishonestly or in a way damaging to another person's assets (such as where a foundation was intended from the outset to circumvent provisions of succession laws).

In addition to that, two further requirements have to be met if creditors intend to pierce the corporate veil to access the foundation's backer:

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

Apart from a misuse of the legal entity, there are further options to pierce the corporate veil. Another option is offered by Article 223 (1) PGR, which states the following: "Where company's creditors suffer damage, they may demand, if the company does not have a claim, that they be compensated directly for the damage inflicted up to them". Article 223 (1) PGR is one of the provisions regulating the claims against the bodies of companies and of legal entities treated as equivalent to them (foundation).

Pursuant to Article 218 (1) PGR, the 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 with intent or gross negligence. Furthermore, there has to be a causal relationship between the damage and a breach of duty by the bodies. If these requirements are not met, damaged creditors may assert claims according to Article 223 (1) PGR.

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 within the Business Judgment Rule (BJR). If a trustee violates his or her duties (breach of trust), he or she is personally liable to the settlor in accordance with Article 924 of the Liechtenstein PGR or, if no longer available, to the beneficiary with all his or her assets. Unless otherwise agreed, co-trustees are jointly and severally liable. This liability is of contractual nature.

Foundations do have a separate legal personality, which means that they are capable of holding assets, suing and being sued. It is one characteristic feature of the foundation that the legal system grants legal personality to "ownerless" assets. The foundation and its assets must be strictly separated from those of the founder. That means that the founder cannot be liable for the foundation's liabilities and vice versa. However, if a trustee or member of the board of foundation violates his or her duties, which result from his or her mandate and the general duties of care (for instance, the BJR), he or she could be held personally liable to the foundation.

Roughly summarised, foundation board members have to preserve the purpose of the foundation, manage the funds appropriately and comply with the law.

This also applies to other entities because members of the council, the board of trustees and others must act honestly and in good faith, like a reasonably prudent person according to the standards of their professions

6.3 Regulation of a Fiduciary's Investment of Assets

According to Article 20 of the Trustee Act ("TA"), trustees must carry out their activities carefully, honestly and professionally in the best interest of their clients in accordance with the rules of professional conduct. Therefore, trustees and trust companies could be held liable if they are found to have fallen beyond the required standard of care, which encourages them to invest their assets prudently.

The Business Judgement Rule can be mentioned here as a general guideline for the management and investment of assets. A trustee therefore acts in conformity with his or her obligations if he or she makes the decision based on appropriate information, free of conflicts of interest and in good faith that his or her decision is in the best interest of the assets to be managed. The purpose of the BJR is to create a "liability-free core area" of entrepreneurial discretion in business decisions of the acting person.

6.4 The Investment Theory or Standard Applied to the Fiduciary Investment of Assets

The purpose of a trust, foundation or other entity usually dictates the management and investment of assets in general terms. Furthermore, a founder can lay down statutory requirements for the asset management.

In the case of foundations and trusts, a distinction can be made as to whether or not the rights of direction have been reserved by a settlor or a founder. If rights of direction have not been reserved, it is advisable to invest the assets in a normal diversified safekeeping account. If corresponding rights have been reserved within foundations documents or a trust deed, these must basically be complied with.

6.5 Authorisation to Hold Active Businesses

Foundations may only conduct commercially managed business under very restrictive conditions set forth in the Liechtenstein Foundations Act (Article 552 et seq. PGR). According to Article 552 paragraph 1 of the PGR, a foundation may only carry out commercially managed business if it directly serves its charitable purpose or if it is permissible on the basis of a special legal basis. To the extent required for the proper investment and management of the foundation assets, the establishment of a commercial enterprise/business is also permissible for private-benefit (family) foundations. If a foundation is the "holder" of a business one has to distinguish between a direct and an indirect "business foundation". The indirect business foundation only holds assets and shares in an active operating business. The direct business foundation conducts a business itself. In practice, a lot more holding foundations exist and hold assets and shares in active operating businesses than conduct a business themselves.

As far as trusts are concerned, there are no such restrictive provisions. The interpretation of a trust relationship is primarily determined by the content of the trust deed. Therefore, an active business can be held in trust.

6.6 Mechanisms to Protect Fiduciaries from Liability

Under Liechtenstein laws, there are mechanisms to protect fiduciaries from liability. As mentioned in section **6.3 Regulation of a Fiduciary's Investment of Assets** above, Liechtenstein's courts do acknowledge the Business Judgment Rule which creates a "liability-free core area" of entrepreneurial discretion in business decisions. If a fiduciary acts according to these rules, he or she cannot be held liable for any damages.

Further, liability can be reduced by delegating the asset management to external specialists. If a fiduciary lacks the necessary expertise, he or she is not only entitled but also obliged to transfer the asset management to external specialists. This allows a fiduciary to largely protect and release him or herself from his or her liability.

7. Citizenship

7.1 Requirements for Domicile/Residency/Citizenship

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

The European "free movement of persons" (*Personenfreizügigkeit*) does not apply and, therefore, it is not easy to take up residence in Liechtenstein.

There is no special visa programme targeted at individuals in Liechtenstein, but there are different ways to receive a residence permit to stay. Liechtenstein distinguishes between short-term permits 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 in or out of employment. These permits are generally limited to a period of five years for EEA and Swiss nationals, and 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 takes an interest in offering the particular individual residence in the country.

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

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

- by birth – children of a Liechtenstein mother or father obtain 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 be married to a Liechtenstein national for at least five years, have his or her place of residence in Liechtenstein and renounce his or her previous citizenship;
- naturalisation as a result of registered partnership – the applicant has to be living in a registered partnership with

a Liechtenstein national for at least five years, have his or her place of residence in Liechtenstein and renounce his or her previous citizenship;
- naturalisation as a result of long-term residence – this form of naturalisation requires a regular residence in Liechtenstein for 30 years, whereby the years up to the age of 20 are counted twice; further, the applicant must renounce his or her previous citizenship; or
- naturalisation due to statelessness – this way to naturalisation requires a regular residence in Liechtenstein for five years.

7.2 Expeditious Means for an Individual to Obtain Citizenship

The most expeditious means 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

8.1 Special Planning Mechanisms for Minors or for Adults with Disabilities

Under Liechtenstein law, an individual gains full legal capacity for the purposes of holding and managing property at the age of 18. Nonetheless, at the age of 14, individuals have limited legal capacity for holding and managing certain property on their own.

In case someone loses capacity to manage his or her affairs or never gains full legal capacity due to a disability, a legal representative or a relative should manage these affairs. The law recognises a special power of attorney whereby someone gives directions as to how and by whom his or her affairs should be managed (" *Vorsorgevollmacht"*).

If this is not possible, the court may appoint a guardian to act on behalf of the person without capacity to contract.

8.2 Appointing a Guardian

Appointing a guardian, conservator or a similar party requires a court proceeding as well as an ongoing supervision by the (family/guardianship) 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 should 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 contains real estate or shares of entities, or if the revenues can provide the financial support of the child. The court can free parents of this duty if they administer the property prudently.

9. Planning for Nontraditional Families

9.1 Children Born Out of Wedlock and Adopted 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, but they are not entitled to inherit from their adoptive parents' ancestors (grandparents and their descendants). A descendant shall be entitled to inherit from their natural ancestors, regardless of his or her adoption by third persons.

9.2 Recognition of Same-Sex Marriage

Same-sex relationships are recognised by Liechtenstein law. The legal institute of registered partnerships is known, but not that of same-sex marriages. 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 a relationship 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, therefore their property is added together for tax purposes. For succession purposes, registered partners are again, subject to the same rules as spouses.

9.3 Recognition of Domestic Partners

Liechtenstein law recognises "domestic partners" as "concubinage partners" *("Konkubinat")*. This means living together without a marriage certificate. Living together without a marriage certificate or registered partnership certificate involves a number of legal risks. Concubinage partners have fewer rights than spouses or registered partners. Particularly with regard to questions of tenancy or maintenance, one has to be very careful. From the tax point of view, however, no preference is made.

10. Charitable Planning

10.1 Laws on 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 exempt from tax liability for exclusively and irrevocably charitable purposes, are deductible. Cash benefits can be deducted up to a maximum of 10% of the taxable acquisition. The individual benefit must in any case amount to at least CHF100.

10.2 Structures Most Commonly Used for Charitable Planning

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 non-profit-oriented and for charitable objectives.

11. Elder Law

Under Liechtenstein law, there are several possibilities for individuals to prepare financially for longer lives. The 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 by him or herself. In addition, there exists an "old-age and disability" insurance.

Furthermore, descendants may have to assist their parents financially, which is a legal obligation provided by paragraph 143 of the Liechtenstein Civil Code ("ABGB").

Regarding legal issues in case 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 case of mental incapacity.

Gasser Partner Attorneys at Law
Wuhrstrasse 6
9490 Vaduz
Liechtenstein

Tel: +423 236 30 80
Fax: +423 236 30 81
Email: office@gasserpartner.com
Web: www.gasserpartner.com

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12. Digital Assets

There are no special provisions under Liechtenstein law concerning the upcoming issue of digital assets. If the deceased has failed to take precautions to deal with his or her digital heritage/assets, relatives can often only turn to operators with a death certificate and a certificate of inheritance (*Einantwortungsbeschluss*) and hope that they will maintain an accommodating practice and prove the access data. As far as cryptocurrencies are concerned, it is strongly advised to include them in a will. It is noteworthy that the Liechtenstein government is planning a law on blockchain systems. A first draft could be presented in early summer 2018, with which business models based on blockchain technology would be integrated in regulatory terms in order to offer companies and customers legal certainty.