

LIECHTENSTEIN COMPANY FORMS

Jura Trust, a fully licensed and regulated trust company in Liechtenstein, offers the following services subject to compliance with all requirements under due diligence legislation:

- consulting in matters of succession, business, and taxation
- formation and management of domestic and foreign foundations, trusts, holding companies and commercially active companies
- acceptance of liquidation mandates
- acceptance of protector mandates
- acceptance of functions as a controlling organ in foundations
- brokerage of all kinds of financial services (except insurance business)
- acceptance of accounting mandates
- family office services

Below you find an overview of the most important legal forms of companies contained in the Liechtenstein Persons and Companies Act (Personen- und Gesellschaftsrecht, PGR): the foundation, the establishment, the trust enterprise (trust reg.), the public limited company, and the trust.

1. THE FOUNDATION

— A General —

Liechtenstein foundation law underwent a major revision in 2009. The most important changes were an extension of the founder's responsibilities, the clarification of what is called «foundation governance» and a strengthening of the foundation board's responsibility, without questioning the well-proven liberal character of the Liechtenstein foundation law as a whole.

A fundamental distinction is made between private-benefit and common-benefit foundation; in practice, mixed (private-benefit) family foundations are the most common form. The pure maintenance foundation, which is a variant of the family foundation, is still admissible and will continue to form the main body of private-benefit foundations.

— B Private-benefit foundations —

The group of private-benefit foundations traditionally includes pure family foundations (which only have family members as beneficiaries) and mixed family foundations (which have the main purpose of a pure family foundation but have common-benefit or other private-benefit purposes as a supplement). A family foundation that is combined with non-family purposes still qualifies as a private-benefit foundation as long as it does not predominantly serve common-benefit purposes.

The private-benefit foundation needs not be entered in the Commercial Register and already comes into being with the declaration of foundation, which includes the statutes issued by the founder and the by-laws. No constitutive entry in the Commercial Register is required; however, voluntary registration is possible, having declaratory effect.

Foundations that are under no obligation of registration must submit a declaration of formation to the Commercial Register Division of the Office of Justice, a fact which serves the principle of confidentiality. In private-benefit foundations, external supervision is replaced by internal governance. Such governance is the duty of the beneficiaries on the one hand but also of optional governing bodies (controlling organ, audit board) on the other.

Depending on the type of their benefit, the beneficiaries may have more or less extensive rights to receive information. The law distinguishes between various groups of beneficiaries, namely entitled beneficiaries, discretionary beneficiaries, prospective beneficiaries and the ultimate beneficiary. The right to receive information is limited by the interests of the beneficiary himself (as far as his rights are concerned) and by the misuse of rights as a general limit.

Foundations may be formed through a fiduciary founder.

The founder's rights have been strengthened by the fact that it is he who must issue the rules on benefits and the regulations, by the possibility of reserving the right to revoke the foundation, and by the power to appoint himself as a controlling organ. In this constellation, the beneficiaries' rights to receive information are limited.

— C Common-benefit foundations —

Common-benefit foundations have a purpose that serves the general public and the common good. They are formed by the founder's declaration of foundation and by the endowment of assets, but receive legal entity status only upon their entry in the Commercial Register. External foundation supervision is performed by a newly created public authority, the Foundation Supervisory Authority (Stiftungsaufsichtsbehörde, STIFA). In cases where the foundation's assets are or are in danger of being, managed and used contrary to the foundation's purpose, the STIFA must apply to a judge for concrete orders in non-contentious proceedings.

Internal control is realised by the obligation to appoint auditors; these must be suitably licensed in Liechtenstein and must meet the criteria of independence. The administration of the foundation is subject to the principles of good management; in this, elements of the «business judgment rule» have been adopted and will serve as a guideline in any concrete assessment of an act of management.

With the revised foundation law, Liechtenstein has taken an important step towards increased recognition of the Liechtenstein foundation as an independent and flexible instrument of succession planning that meets the international standards of foundation governance.

2. THE ESTABLISHMENT

The establishment (Anstalt) is a legal entity under civil law whose capital is normally not divided into shares. Typically, Jura Trust acts as the establishment's founder and may then assign its rights in the company by way of a deed of assignment. This ensures the protection of privacy. The establishment's beneficiaries and their rights are laid down in detail in separate by-laws, which are issued by the establishment's supreme governing body. If no rules on beneficiaries are issued, the current holder of the founder's rights is by virtue of law considered to be the establishment's beneficial owner.

Another legal form found in liberal Liechtenstein company law is the so-called «establishment with foundation-like character». Here, it is not the founder but the board of directors which is the supreme governing body. In that case, the founder has waived the rights that he has as a company body.

In contrast to the foundation, it is possible for an establishment to pursue a commercial purpose.

3. THE TRUST ENTERPRISE

The trust enterprise (trust reg.) is a legal entity modelled after the Anglo-American business trust. Its structure is the same as that of the Liechtenstein establishment. The trust enterprise may pursue commercial as well as non-commercial objects. Its supreme governing body is the settlor / the holder of the settlor's rights, and its managing body is the board of trustees.

4. THE PUBLIC LIMITED COMPANY

The public limited company or corporation (Aktiengesellschaft, AG) is a legal entity whose capital has been divided into shares and whose liabilities are covered only by the company's assets. Shares must be of registered. There are only minor differences between the Liechtenstein Aktiengesellschaft and the generally known and common types of public limited company / corporation that exist in comparable jurisdictions.

The supreme governing body is the general assembly of shareholders. Normally, it is the board of directors which is charged with properly managing and representing the company.

5. THE TRUST

Liechtenstein is the first country in Continental Europe to have adopted and codified the Anglo-American concept of the trust (Art. 897 - 932 PGR). Accordingly, it is possible to form a trust (Treuhanderschaft) under Liechtenstein law, too. Just like in Anglo-Saxon jurisdictions, the trust does not have legal personality.

A trust is formed where a person (the settlor) transfers assets or rights to another person (the trustee) subject to the obligation to manage or use these as the trust fund in the trustee's own name as a separate legal subject for the benefit of one or more third parties (beneficiaries) with effect against anybody.

At least one trustee must be domiciled in an EU/EEA member state or in Switzerland and meet certain qualifications. Jura Trust or its specialised trust companies are able to take over this function. In order to preserve the interests of the beneficiaries, it is common practice to appoint a protector or board of curators, whose consent is required for various acts of the trustees, such as the appointment of beneficiaries, the payment of grants from the trust fund, etc.

Liechtenstein trust law offers the following advantages:

- The original trust fund may consist of any asset, even a small one (e.g. CHF 100). When the trust is formed, a one-time formation and stamp duty is due in the amount of 0.2 percent of the original trust fund, with a minimum amount of CHF 200. Trusts are merely subject to an annual capital tax of 0.1 percent of the net assets of the trust, with a minimum amount of CHF 1'800. Income and profits as well as distributions to the beneficiaries are not subject to taxation in Liechtenstein.
- In contrast to trusts in Anglo-Saxon jurisdictions, Liechtenstein trusts may be formed for an indefinite period of time. In addition, income may be capitalised. Pure purpose trusts without individually specified or determinable beneficiaries are possible, too.
- Normally, trusts are entered in the Commercial Register. However, only very little basic information on the trust is made public; the names of the settlor and of the beneficiaries are not published under any circumstances.

In order to protect the privacy of participants, it is common practice to use a fiduciary settlor. Various types of trust are possible (revocable, irrevocable, etc.).

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For the sake of readability, this is a very much simplified presentation, which only serves to provide basic information.