

# LIECHTENSTEIN



## Law and Practice

### Contributed by:

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**Ospelt & Partner Attorneys at Law Ltd**

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**Ospelt & Partner Attorneys at Law Ltd** was established in 1997 by Dr Alexander Ospelt. It is a full-service law firm advising clients in the following areas: corporate law/foundation and trust law, litigation and arbitration, business and commercial law, commercial contract law/M&A, business criminal law, banking and capital markets/insurance law, employment law, IP/IT law, and gambling and casino law. With a team of 11 lawyers (including four partners), the firm has

extensive experience representing ultra high net worth individuals and serves both international and national clients. It has strong roots in Liechtenstein, where it provides dedicated services to local and international clients and companies. Jointly with its affiliated trustee and corporate services provider Legacon Treuhand Anstalt, it provides high levels of expertise and advice to its clients.

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## 1. Tax

### 1.1 Tax Regimes

#### Personal Income Tax

Individuals residing in Liechtenstein have unlimited tax liability with their global property and income to property and income tax. Individuals neither domiciled nor habitually resident in Liechtenstein are subject to limited tax liability on their domestic assets and domestic income.

The tax liability commences on the day on which the taxpayer:

- takes up residence in Liechtenstein or makes Liechtenstein their place of habitual abode (unlimited tax liability); or
- has assets (real estate and domestic permanent establishments) in Liechtenstein or generates earnings in Liechtenstein (limited tax liability).

#### Tax Rate

The national income tax is calculated based on the taxable income. The first CHF15,000 of a single person's income are exempt from income taxation. The national income tax rate is a progressive tax rate and amounts from 1% (on income up to CHF20,000) to 8% (on a single person's annual income above CHF200,000). In addition, a municipal surcharge is levied. The rate of this surcharge is determined every year as a percentage of the national tax. It ranges from 150% to 250%. A variety of expenditures are tax deductible.

#### Wealth Tax

In addition to income tax, Liechtenstein levies a wealth tax or property tax (*Vermögenssteuer*). For the tax year 2023, a wealth or property tax in kind of a notional interest of 4% on the fair market value of the total movable and immov-

able assets of a taxpayer is calculated and subject to income tax together with other income. Securities with a quoted price held by a natural person have the considered value on the basis of the quoted price.

#### Inheritance Tax

Liechtenstein levies neither gift nor inheritance tax.

#### Trusts and Private Foundations

Private foundations are legal persons under Liechtenstein tax laws. Trusts with legal personality (*Treuunternehmen*) are also legal persons. Both are subject to corporate income tax like other companies and investment funds. In general, the corporate income tax for all legal entities domiciled in the Principality of Liechtenstein is 12.5% of taxable net income with a minimum tax of CHF1,800 per year. Trusts without legal personality are not subject to corporate income tax.

#### Private Asset Structure (PAS)

The status of a PAS can be granted to legal persons who, in the pursuit of their objective, do not perform any commercial activity (such as renting or lending), in particular if they exclusively acquire, hold, manage and sell bankable assets according to the Liechtenstein Assets Management Act and participations in legal persons, liquid funds and bank balances. The PAS may only hold participations in companies if it can be proved that the shareholders or beneficiaries do not exercise actual control over the management of these companies through direct or indirect influence. The articles of incorporation of a PAS must indicate that they are subject to the restrictions applying to a PAS under the Tax Act of Liechtenstein. Investors of a PAS can only be natural persons acting within the context of management of their private assets, an asset

structure acting exclusively in the interests of the private assets of one or more natural person or an intermediary for one of these mentioned persons. A PAS only pays the annual minimum corporate income tax of CHF1,800.

## 1.2 Exemptions

### Exemptions from Wealth Tax/Property Tax

Exempted from wealth tax are:

- the taxpayer's household content and personal content;
- privately used motor vehicles with a value under CHF25,000 (single taxpayer)/ CHF50,000 (jointly taxable spouses);
- equipment and tools required for the exercise of an agricultural or commercial gainful activity or another profession under the total value of CHF2,000;
- collections of artistic, historical or similar importance made accessible to public viewing, educational purposes or promoting tourism;
- assets in agricultural products such as hay, grain and fruit;
- real estate located abroad; and
- business premises located abroad.

### Tax Exemption on Dividends/Switch-Over-Clause

In principle, dividends and profits deriving from shareholdings in domestic or foreign legal persons are exempt from income tax. However, shares in profits/dividends due to participations in or distributions of foreign legal entities are not exempt from income tax if the following cumulative conditions are fulfilled:

- the total income of the foreign legal entity paying the dividends/shares in profits (ie, distribution) is sustainable to more than 50% from passive income (exemption: the income

is generated within the framework of an actual economic activity by the foreign legal entity making the distribution); and

- the net profit of the distributing foreign legal entity is directly or indirectly subject to low taxation.

A low rate of taxation is understood as either:

- deduction of corporate earnings tax at a rate that is less than half the rate of taxation in Liechtenstein (in case of holdings of less than 25%); or
- an effective deduction of corporate earnings tax of less than 50% of the corporate earnings tax charge in an equivalent situation in Liechtenstein (in case of holdings of more than 25%).

In principle, capital gains from the sale or liquidation and unrealised increases in value of holdings in domestic or foreign legal persons are tax-exempt. Consequentially, capital losses cannot be deducted. Such capital gains and unrealised capital gains are not exempt from income tax if they relate to participations in foreign legal entities whose profit shares would also not be exempt from income tax.

## 1.3 Income Tax Planning

Liechtenstein does not levy capital gains tax. Capital gains are tax free.

Liechtenstein acknowledges income tax planning. One main principle is the decision neutrality of taxation, ie, taxation shall be neutral towards economic or business decisions. Specific tax planning provisions are the PAS (see **1.1 Tax Regimes**) and lump-sum-taxation on expenditures.

## Lump Sum Taxation

Liechtenstein offers an appealing flat tax based on expenditure for natural persons. This tax on expenditure is levied instead of income tax and wealth or property tax. Individuals considering this tax regime must meet the following requirements:

- foreign citizenship;
- taking up residence or habitual residence for the first time or after a period of ten years of absence;
- no engagement in any gainful activity in Liechtenstein;
- living off the gain of global personal property; and
- application approved by the tax authority.

The tax base is the overall and global expenditure from maintaining the individual's living standard. The following expenses are typically taken into account:

- housing;
- wages for employees;
- further education; and
- leisure activities, including ownership or special expenses for holiday residences, yachts and airplanes, respectively.

The effective tax rate applied to the overall sum is 25%.

A further advantage of the tax on expenditure is that the tax can be fixed for several years in advance, therefore an individual does not have to meet any other reporting obligations except considerable alterations on the expenditures themselves.

## 1.4 Taxation of Real Estate Owned by Non-residents

### Taxation of Real Estate of Non-residents

Non-residents are subject to limited tax liability on their domestic assets, including real estate and domestic income.

### Real Estate Gains Tax

Profits on the sale of real estate located in Liechtenstein are taxable under the real estate gains tax. The transfer of a property by forced sale or expropriation and the economic change of ownership of a property, the encumbrance of a property with easements and the transfer of participation rights in legal entities whose main purpose is the acquisition, ownership, management and sale of real estate are considered to be equivalent to a sale. The seller is liable for real estate gains tax.

### Taxation basis

The proceeds exceeding the investment costs are deemed to be the gain on real estate. The purchase price including all other payments by the purchaser shall be deemed to be the proceeds of the sale. If a property is transferred by forced sale or expropriation, the proceeds of the auction or the compensation amount shall be deemed to be the proceeds of the sale. Losses incurred by the taxpayer on the property in previous years may be deducted from the gain on the property, provided such losses were not covered by insurance benefits. In the case of an exchange of immovable property, the difference between the market value of the property received (asset value and premium) and the investment costs of the property given up is deemed to be a gain on real estate.

Investment costs are deemed to be the official estimated tax value at the time of sale, increased by the purchase price, to the extent that it

exceeds the tax value, and the value-enhancing expenses excluding the usual value maintenance costs.

### *Deferral of the real estate gains tax*

Taxation with real estate gains tax is deferred by law or upon request in the event of:

- change of ownership by reason of death, advance inheritance or gift;
- consolidation of property and reallocation of building land or boundary adjustments carried out in accordance with public law;
- restructuring;
- changes of ownership between spouses; and
- change of ownership through the transfer of real estate to settle claims under matrimonial property law or maintenance law or claims resulting from the involvement of one spouse in the acquisition by the other.

### *Tax rate of real estate gains tax*

The tax rate pursuant to personal income tax applies to taxable gains on real estate. If several parcels of the same property or properties that formed a property unit five years ago are sold within five years, the basic tax-free amount is only granted once to the same taxpayer. Instead of the municipal surcharge, a surcharge of 200% is levied on the amount calculated.

## **1.5 Stability of Tax Laws**

The Liechtenstein tax system is stable and reliable for private clients. The current tax law came into force on 1 January 2011. The general principles of the tax law remain unchanged. Most amendments are implemented in connection with European and global tax initiatives. The implementation of the switch-over-clause and the GloBE Act of 10 November 2023 on the global minimum tax regime for big multinational companies are also noteworthy.

## **GloBE Tax**

The GloBE tax applies for first time for the tax years beginning on or after 1 January 2024. The Liechtenstein top-up tax within the meaning of the GloBE Model Rules applies to domestic constituent entities of a multinational enterprise group or a large domestic group whose ultimate parent entity has generated an annual revenue of EUR750 million or more in its consolidated financial statements in at least two of the four fiscal years immediately preceding the reviewed fiscal year. Joint ventures and constituent entities of joint ventures are also subject to the Liechtenstein top-up tax. If a lower threshold than the mentioned annual revenue applies in the tax jurisdiction of the ultimate parent entity of a multinational enterprise group, its domestic constituent entities are also subject to the Liechtenstein top-up tax. The minimum rate for the Liechtenstein top-up tax is 15%. Liechtenstein top-up tax shall be set to zero in the first five years of the initial phase of the international activity of the multinational enterprise group, provided that no top-up tax is applied abroad in relation to Liechtenstein constituent entities, and in the first five years from the first day of the fiscal year in which the large domestic group originally comes within the scope of the GloBE Act. Liechtenstein top-up tax shall be allocated to and collected from the Liechtenstein constituent entity. All domestic constituent entities shall be jointly and severally liable for the Liechtenstein top-up tax.

## **1.6 Transparency and Increased Global Reporting**

Liechtenstein has committed to OECD standards and endorses the global Common Reporting Standard (CRS) for the automatic exchange of information in tax matters (AEOI). Liechtenstein has been exchanging information with reportable AEOI-partner states since 2017. Annex 1 of

the AEOI-Ordinance (*AIA-Verordnung*) contains the list of reportable partner states. The list comprises 108 states (as of 1 January 2019). The legal basis for the AEOI between Liechtenstein and the EU member states is the “Agreement between the European Union and the Principality of Liechtenstein on the automatic exchange of financial account information to improve international tax compliance”. The legal bases for the AEOI between Liechtenstein and non-EU countries are the multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA).

Further, Liechtenstein complies with the US Foreign Account Tax Compliance Act (FATCA) provisions. Liechtenstein has also entered into a Model I intergovernmental agreement (IGA).

In May 2017, Liechtenstein implemented Action 13 of the BEPS Action Plan by activating the exchange of Country-by-Country Reports (“CbC Reports”) of the CbC Multilateral Competent Authority Agreement (MCAA) with 26 jurisdictions on a bilateral basis (the first exchanges took place in 2018 for the reporting period of 2017). Multinational enterprises (MNEs) with an annual consolidated group revenue of more than CHF900 million have to file CbC Reports. Since 1 January 2017, the Liechtenstein tax authorities have been required to exchange information on tax rulings spontaneously. Liechtenstein has not yet implemented any measures in accordance with Action 12 of the BEPS Action Plan (which requires taxpayers to disclose their aggressive tax planning arrangements).

## 2. Succession

### 2.1 Cultural Considerations in Succession Planning

Liechtenstein is a country with a long European history and culture. The main cultural factors are the monarchy with a high level of stability, the Roman Catholic Church as the state church and the natural heritage. Liechtenstein still has significant industry and family businesses spanning more than two generations. Consequently, succession planning in the family, the transfer of real estate (land or buildings) and co-operation of generations regarding transfer of wealth are important. Liechtenstein also has a long tradition in banking and insurance services.

In connection with succession planning, Liechtenstein banks, asset managers, investment companies as well as legal advisors are competent in advising ultra high net worth clients, domestic and international, in succession planning.

### 2.2 International Planning

Liechtenstein families are part of the international growth of businesses and families. Several important and wealthy families are providing business and moving their residency globally. Consequently, Liechtenstein tax and inheritance laws must cover such flexibility. Liechtenstein implemented the EU Succession Regulation (Regulation (EU) No 650/2012). Liechtenstein’s government is engaged in increasing the number of double-taxation agreements. Under succession planning, the Liechtenstein private foundation is still an important legal form for succession planning of families and businesses.

### 2.3 Forced Heirship Laws

Liechtenstein has forced heirship rules. A compulsory portion of the estate shall be transferred



to close relatives. Persons entitled to a compulsory portion are children, grandchildren and great-grandchildren; parents and grandparents are also entitled to a compulsory portion if the deceased has no descendants. The spouse or registered partner is also entitled to a compulsory portion. However, siblings, uncles/aunts, nieces/nephews, and the partner in a non-marital partnership are not covered by the forced heirship.

The compulsory portion for the husband and the children is half of the portion under legal succession, ie, succession based on civil law, and for the predecessors it is one third of the portion under legal succession.

In order to calculate the compulsory portion, the evaluation of the estate is necessary. Gifts from the deceased or other dispositions must be taken into account. This includes gifts to children upon marriage/cohabitation, gifts upon commencement of a profession, payment of debts of an adult child, advances from the compulsory portion or, with regard to spouses, the statutory advance legacy. The right to a compulsory portion generally arises upon the death of the testator.

The last will, marriage contract or inheritance contract can be used to arrange the inheritance as the deceased wishes, taking into account the compulsory portions.

## 2.4 Marital Property

Marriage does not establish conjugal community of property (Section 1233 ABGB). As the stipulations with regard to separation of property are *ius dispositivum*, the spouses are free to organise their common fortune *ad libitum*. They can establish a comprehensive community of past and future property, as well as a community

comprising certain goods in common use; they can even extend this agreement to a property regime of the community of accrued gains.

## 2.5 Transfer of Property

Transfer of property is permissible under Liechtenstein civil laws. Transfer of real estate is subject to real estate gains tax (for more information, see 1.4 Taxation of Real Estate Owned by Non-residents).

Advance transfer of inheritance is subject to recalculation of legal portion or compulsory portion upon death of the transferor. At the request of a person entitled to a compulsory portion, gifts made by the deceased to another person entitled to a compulsory portion must be taken into account when calculating the portions of the estate. The object of the gift shall be added to the estate at the value as of transfer.

## 2.6 Transfer of Assets: Vehicle and Planning Mechanisms

Liechtenstein levies neither gift nor inheritance tax. Assets can be transferred to the younger generation tax-free.

## 2.7 Transfer of Assets: Digital Assets

Digital assets are considered to be assets under the Liechtenstein Blockchain Act (TVTG). Such assets are treated like moveable assets. Digital securities are treated like securities.

## 3. Trusts, Foundations and Similar Entities

### 3.1 Types of Trusts, Foundations or Similar Entities

#### Trust/Trust Company

On 1 April 2006, the Hague Trusts Convention entered into force in Liechtenstein. Trusts are

recognised in Liechtenstein. A trust is not a legal entity and has no legal personality, but it rather is a contractual legal relationship. Contrary to the (simple) trust, Liechtenstein also recognises Trust Enterprises with legal personality.

A trust consists of the trust fund transferred by the settlor to a trustee. The trustee is obliged to administer or use the trust fund in their own name as an independent legal owner for the benefit of one or several beneficiaries. Trusts can be set up for charitable, social, cultural or similar purposes and as a trust settlement or a family trust for the benefit of one or more families.

Trusts (without legal personality) established under Liechtenstein law or having their effective place of management in Liechtenstein are liable to the minimum corporate income tax of CHF1,800 per year. Trust Enterprises (with legal personality) are subject to regular corporate income taxation at a rate of 12.5% and are therefore subject to tax assessment. The endowment/transfer of assets located abroad to a Liechtenstein trust by a natural person (settlor) is not subject to the endowment tax of 3.5% of the value of the contribution if the settlor is not subject to unlimited tax liability in Liechtenstein. Liechtenstein does not levy a withholding tax on distributions made by a Liechtenstein trust to beneficiaries abroad.

Liechtenstein trusts may be established for an indefinite period. Therefore, trusts are not per se affected by succession. The law of the state whose nationality the settlor has may provide their heirs with a compulsory share of their estate. If a settlor submits the transfer of assets to a trust under the laws of Liechtenstein, their heirs may claim payment from the trust fund if the estate of the deceased settlor does not suffice to cover their compulsory share (Article 29

paragraph 5 IPRG, and Section 951 paragraph 3 ABGB). If Liechtenstein law was chosen as the law to be applied on the transfer of assets, payment in the amount of the shortfall in the compulsory share cannot be claimed from the Liechtenstein trust if the assets were transferred to the trust two years prior to the demise of the settlor (Section 785 paragraph 3 ABGB).

## Foundation

Foundations are recognised in Liechtenstein and governed by Article 552 paragraph 1 and the following PGR.

Foundations have had a long tradition in Liechtenstein. The common type is the family foundation using the assets comprised therein for the benefit of members of one or more families, also often used as a holding of family business companies. Liechtenstein is a well-known jurisdiction for foundations with charitable purposes.

The foundation legal entity established by a founder. The founder specifies its purpose and endows it with assets. These assets become property of the foundation and are separated from the founder's private assets. The corporate body of a foundation is the Foundation Council, which conducts the business, represents the foundation in its relations with third parties and is responsible for the fulfilment of the foundation's purpose. The Foundation Council must consist of at least two members. The founder can designate additional corporate bodies to manage the assets, and to advise and assist the Foundation Council. The minimum nominal capital is CHF30,000, EUR30,000 or USD30,000. The formation of the foundation can be in cash or in kind. The capital is at the Foundation Council's free disposal.

Foundations established in Liechtenstein are liable to at least the minimum corporate income tax of CHF1,800 per year. Foundations with their registered office or effective place of management in Liechtenstein are liable to corporate income tax at a rate of 12.5% on their total income. Charitable foundations can be tax-exempt.

The endowment/transfer of assets located abroad to a Liechtenstein foundation by a natural person (founder) is not subject to the endowment tax of 3.5% of the value of the contribution if the founder is not subject to unlimited tax liability in Liechtenstein. Liechtenstein does not levy a withholding tax on distributions made by a Liechtenstein foundation to beneficiaries abroad.

A foundation is a legally and economically independent special-purpose fund that is formed as a legal entity through the unilateral declaration of will of the founder. In general, assets of the founder endowed by them to the foundation are not subject to their succession. If the testator was entitled to derive benefits from the foundation only during their lifetime, their beneficial entitlement in the foundation ends with their death and does not form part of their estate.

### Similar Entities

The Establishment is an original Liechtenstein type of legal entity. It can be used for different purposes due to its flexible character. There are two main types of establishment, ie, the establishment with founder's rights and the establishment without founder's rights (foundation-like). The establishment with founder's rights is similar to the small limited liability company. The holder of the founder's rights is the supreme corporate body. The founder's rights can be transferred inter vivos by assignment. The establishment

without founder's rights is administered and represented by the board of directors as the supreme corporate body. The board of directors shall administer the establishment for the purposes established by the founder in the articles of association and bylaws. It is generally incumbent upon the board of directors to manage the establishment's business and to represent the establishment towards third parties.

The purpose of a establishment can be of an economic or non-economic nature and it can be in any legally permissible form, eg, trade in goods, acquisition of participations, financing, management of real estate, management of assets for specific beneficiaries or for purely charitable purposes. The purpose of the establishment must be lawful and reasonable.

The capital can be specified in Swiss francs, euros or US dollars. The minimum nominal capital is CHF30,000.00, EUR30,000 or USD30,000. If the establishment's capital is divided into shares, it must be at least CHF50,000, EUR50,000 or USD50,000. The formation of the establishment can be in cash or in kind. The minimum capital must have been fully paid up or contributed upon the formation of the establishment. The capital is at the establishment's free disposal, as soon as it has been entered in the commercial register.

### 3.2 Recognition of Trusts

Trusts are recognised in Liechtenstein (see 3.1 Types of Trusts, Foundations or Similar Entities).

### 3.3 Tax Considerations: Fiduciary or Beneficiary Designation Taxation of Fiduciary

Liechtenstein does not recognise a separate fiduciary income tax, ie, an income taxation of a person's estate or trust assets. Liechtenstein

tax laws include such assets to the income taxation, if applicable. Income producing assets like bonds, mutual funds, rental property, savings accounts and stocks are considered to be personal income, even if such income derives from estate or trust.

### Taxation of Beneficiary of Trust, Foundation or Similar Entity

Distributions of private foundations, trusts or similar entities are either subject to wealth tax/property tax or to personal income tax. If the asset, eg, bond, fund or security, is not subject to this wealth tax, the distribution is subject to personal income tax.

Beneficiaries of irrevocable foundations, trusts and establishments similar to foundations may request, with the consent of the trustee or Foundation Council, to be subject to wealth tax in their own right. In this case, the respective foundation, trust or establishment shall fulfil the wealth or income tax liability instead of the beneficiaries. The assets of revocable foundations, trusts and establishments structured like foundations shall be taxed by the founder.

The transfer of assets to a legal entity which is no longer subject to wealth tax and in the case where no benefits or shares become subject to wealth tax is taxable at with a transfer tax of 3.5% of the wealth tax value of the transfer.

### 3.4 Exercising Control Over Irrevocable Planning Vehicles

Liechtenstein has a long history and knowledge of the formation and administration of planning vehicles. Liechtenstein implemented the foundation laws and is one of few civil rights countries to recognise the trust as a planning vehicle. Subject to the articles and bylaws of the private foundation or the trust, a settlor can have

directorship, power to instruct the Foundation Council or trustee, or appoint a consultant or protector to the foundation or trust.

Usually, the founder is not in control of the private foundation. The founder, however, is registered as the controlling person in the register of beneficial owners. The founder does not own the assets of the private foundation. However, the founder is entitled to be a member of the Foundation Council, which is rarely the case. As of the formation of the foundation, the right of the founder to revoke the foundation and the right to amend the foundation deed can be included. Such rights cannot be included after valid formation of the foundation. In many cases, the right of the Foundation Council to amend the foundation deed is included. Such right is subject to limitations on the purpose of the foundation or other irrevocable rights. If the foundation deed does not govern the right of the Foundation Council to amend the foundation deed, the amendment rights are limited under applicable law in the Persons and Companies Act.

Regarding the Liechtenstein private foundation, Liechtenstein law recognises both the foundation under control of the settlor and the beneficiaries and the discretionary foundation.

Beneficiaries with a legal entitlement are beneficiaries who, on the basis of the articles of the foundation, the bylaws or any regulation, have a legal entitlement to a specified or specifiable benefit, also in terms of the amount, a benefit from the foundation assets or foundation income. Any beneficiary is entitled, in so far as the beneficiary's rights are concerned, to review the articles of the private foundation, the bylaws in connection with their rights and any regulations. As far as beneficiary's rights are concerned, the beneficiary is entitled to the dis-

closure of information, reporting and accounting. For this purpose, the beneficiary has the right to inspect the account books and business papers and to produce copies, and also to examine and investigate all facts and circumstances, in particular the accounting, personally or through a representative.

Discretionary beneficiaries are those who belong to the group of beneficiaries designated by the founder and whose potential beneficiary status is at the discretion of the Foundation Council or another body appointed for this purpose. Anyone who only has an entitlement to such a future beneficiary is not a discretionary beneficiary. A legal claim of the discretionary beneficiary to a specific benefit from the foundation's assets or the foundation's income shall in any case only arise upon the valid adoption of a resolution by the Foundation Council or the body otherwise responsible on an actual distribution to the corresponding discretionary beneficiary and shall expire upon receipt of the same.

Regarding the Liechtenstein Trust, the settlor may include a right to amend the trust deed or revoke the trust. In many cases, the trustee has limited rights to amend the trust deed but, for example, an amendment right to achieve the purpose of the trust. Rights of the beneficiaries of a trust include the claim of their rights or interests in connection with the trust deed. Most common Liechtenstein trusts are discretionary trusts. However, it is possible to include monetary rights of the beneficiaries. Control in trusts is often granted by the protector, a person nominated by the settlor to influence the trustee or even dismiss and appoint a new trustee.

## 4. Family Business Planning

### 4.1 Asset Protection

The Liechtenstein regime on private foundations, trusts or similar entities is the most popular method for asset protection planning. It has now almost 100 years of history and development. The Liechtenstein foundation is well known in Europe and around the world (for details on private foundations, trusts and establishments see **3.1 Types of Trusts, Foundations and Similar Entities**).

In addition, life insurance (PPLI) is also a widely used tool.

### 4.2 Succession Planning Legal Structures

The above-mentioned private foundations and trusts (see **3.1 Types of Trusts, Foundations and Similar Entities**) are the most popular succession planning strategies and structures in Liechtenstein.

### Dispositions During Lifetime

In addition to such structures, Liechtenstein recognises the transfer of real property and companies from one generation to the next generation. Property can also be transferred to the next generation with the registration of a right of use (*Nutzniessung*) for the parents. With regard to real estate, such right of use must be registered in the land register for effect on property. Contractual arrangements are also common, eg, free lease of the land.

Shares in business companies can be transferred by gift or sale and purchase agreement. Successors can acquire a small share and get pre-emption rights on the remaining shares.

Successors must consider the wealth tax on real property in Liechtenstein and participation rights.

## Estate Dispositions

Liechtenstein inheritance law comprises statutory succession and testamentary succession. If no testamentary dispositions are made, intestate succession applies.

Testamentary dispositions can be made in a will or contract of inheritance, among other things (subject to forced heirship). If only one or more person is appointed without restricting them to a part of the estate, they receive the entire estate. If the appointed heirs have only been granted a specific part of the estate in relation to the whole, the remaining parts go to the legal heirs. The will of the testator must be specific and declared in full awareness, with deliberation and seriousness, free from coercion, fraud and material error. The last will can be handwritten without witnesses, typed in front of three independent witnesses who are not related to the heirs, or declared before the court, even in one's own words before the court. Such an oral will is recorded in a court protocol.

The heir receives the assets and debts unless declared otherwise.

## 4.3 Transfer of Partial Interest

Liechtenstein levies neither gift nor inheritance tax. However, Liechtenstein levies a wealth tax or property tax (*Vermögenssteuer*). The partial interest is part of the wealth of the receiving taxpayer. Such asset is valued at fair market value (no discount).

## 5. Wealth Disputes

### 5.1 Trends Driving Disputes

Trends driving dispute resolution are moving towards arbitration in certain areas. Although Liechtenstein has a good judicial system with three court levels, arbitration is an alternative.

Disputes between private foundations and trusts and the beneficiaries or other persons are subject to the Liechtenstein Princely Courts (*Fürstliche Gerichte*), ie, the court of first instance (*Fürstliches Landgericht*), the High Court (*Fürstliches Obergericht*) and the Supreme Court (*Fürstlicher Oberster Gerichtshof*). All courts have distinguished jurisprudence on private foundations and trusts, beneficiary rights and responsibility of the Foundation Council or the trustee. Liechtenstein has a newly developed arbitration association and arbitral tribunals for arbitration of foundation law. As a consequence of the long history of foundation, Liechtenstein arbitral judges are highly competent in the respective areas.

The business judgement rule (see 6.2 **Fiduciary Liabilities**) is part of Liechtenstein civil law.

Most recently, the Liechtenstein Princely Supreme Court has ruled on:

- the legal position of the beneficiary and the official involvement of a “material” party;
- the responsibility of the foundation board in asset management in the sense of a fault of assumption;
- the dissolution and liquidation of a foundation due to divorce;
- the insurer's duties of disclosure and information towards the foundation and the beneficiary;
- the beneficiaries' rights to information and disclosure; and

- the requirements for amendments to the articles of association by foundation bodies.

## 5.2 Mechanism for Compensation

Liechtenstein is subject to the civil law on damages. Damages need to be verified by the claimant to receive compensation. Liechtenstein does not recognise punitive damages.

Compensation for damages can be granted by the Liechtenstein courts or the Arbitral Tribunal after a proceeding. Save for Austria and Switzerland, Liechtenstein is not party to any multilateral agreement on enforcement of legal titles. Liechtenstein entered into a bilateral agreement on the enforcement of legal titles with Austria and Switzerland only. As a consequence, it is difficult to receive compensation with a foreign legal title. Liechtenstein civil procedure law recognises a special proceeding on the law enforcement of foreign legal titles. Such proceeding is a new civil proceeding regarding the validity of the foreign title.

## 6. Roles and Responsibilities of Fiduciaries

### 6.1 Prevalence of Corporate Fiduciaries

Liechtenstein has a well-developed system of corporate fiduciaries. These professionals are members of the Liechtenstein Chamber of Trustees and subject to strong corporate governance and disciplinary guidelines (*Standesrichtlinien*). Currently, approximately 300 trustees and trustee services companies are registered with the Financial Market Authority. Small flexible firms, mid-size firms with a range of services (corporate services, accounting, legal advice) and big multi-service companies exist. All members of the Liechtenstein Chamber of Trustees are

subject to very high standards of conduct and execution of professional services.

### 6.2 Fiduciary Liabilities

Fiduciaries and trustees can be held liable for liabilities of the entity based on civil law. In accordance with the international business judgement rule, trustees are not liable if the entity is administered and managed, namely:

- there were no conflicts of interest
- the decision has been made formally and correctly by the responsible body and in compliance with all regulations (eg, approval quorums); and
- there is an appropriate information base, which has been evaluated in a proper decision-making process.

If these requirements are met, the court will only examine the content of the decision with restraint. Otherwise, the courts will carry out a strict examination of the content of the decision. The most important requirement is a proper decision-making process based on an adequate information base.

Some trustees enter into an indemnity agreement with the ultimate beneficial owner for protection from liability. Trust deeds often include such clause of indemnification, save for fraud and wilful misconduct. In addition, professional liability insurances are also often in place.

### 6.3 Fiduciary Regulation

Liechtenstein law and the Code of Conduct of the Liechtenstein Chamber of Trustees regulates fiduciary investment of assets and encourage fiduciaries to invest prudently. According to the Code of Conduct of the Liechtenstein Chamber of Trustees, the trustees are under an obligation to act prudently.

## 6.4 Fiduciary Investment

Liechtenstein does not recognise a special investment theory or a particular investment standard applied to the fiduciary investment of assets. Prudent investment actions are governed by Liechtenstein laws on banks, asset managers and brokers. Diversification of assets is recommended above a mid-size level of property. However, there is no requirement on fiduciaries regarding the investment strategy. Trusts, private foundations or similar entities are authorised to hold active businesses. Trusts are entitled, by virtue of the entity owning that asset, to effectively run the business. Conversely, the private foundation is not entitled to run a business. Foundations may serve as passive holding entity.

## 7. Citizenship and Residency

### 7.1 Requirements for Domicile, Residency and Citizenship Short-Term Stay

No restrictions or qualifications apply to visitors staying for no longer than three months without the intention to work. However, nationals of countries listed in Annex I of Regulation (EU) 2018/1806 are subject to the visa requirement for short-term stays.

### Residency

The government is competent for the granting of residence permits. EEA residents and Swiss citizens are subject to the Act on the Freedom of Movement of Persons (PFZG). Third-country nationals are subject to the Act on Foreigners (AuG). Within the scope of the AuG, permits are granted under consideration of national interest only. Those awarded residence are entitled to family reunions (Article 40 and the following PFZG; Article 32 and the following AuG).

Applications for residence permits must be filed with the government and are treated independently.

Permits for staying longer than three months are granted very selectively (maximum number defined by law). As many high net worth individuals and other private clients or distinguished professionals needed by the industry are favoured by the government, residence permits are usually granted for these categories by the government.

Notwithstanding the ordinary permit procedures under PFZG (granting of government), residence permits are also issued to EEA nationals by drawing lots. The draw takes place in a two-stage procedure. There are usually two draws per calendar year.

### Nationality

The requirements to be met in order to qualify for nationality are stipulated in the Citizen Act (BüG). Liechtenstein follows the principle of *ius sanguinis*: any child of a mother or father with citizenship of the Principality becomes a Liechtenstein citizen. Other options for obtaining nationality are as follows.

- Ordinary procedure: takes place via admission to municipal citizenship, which is decided in a vote by the citizens of the municipality residing in the municipality. The applicant must have been ordinarily resident in Liechtenstein for ten years and renounce their previous citizenship.
- Marriage/registered partnership: the applicant has been married/in a registered partnership to a Liechtenstein citizen for at least five years, is ordinarily resident in Liechtenstein and has renounced their previous citizenship.



- Long-term residence: requires 30 years of regular residence in Liechtenstein, whereby the years up to the age of 20 are counted twice. The applicant must renounce their previous citizenship.
- Statelessness: requires five years of regular residence in Liechtenstein. The applicant was born in Liechtenstein and has been stateless since birth and has not yet reached the age of 21.

## 7.2 Expeditious Citizenship

Liechtenstein does not provide any investor or other special categories for obtaining citizenship.

The concept of tax on expenditure or lump sum taxation is designed to attract wealthy foreigners (see 1.3 Income Tax Planning).

## 8. Planning for Minors, Adults with Disabilities and Elders

### 8.1 Special Planning Mechanisms

Liechtenstein does not have a special planning mechanism for minors or for adults with disabilities like a special needs trust. Protection of minors and adults with disabilities are covered by civil law and social security laws.

### 8.2 Appointment of a Guardian

Liechtenstein recognises the appointment of a guardian for minors and adults with mental disabilities under special legal provisions. The guardian shall assist and represent a person who is unable to manage all or some of their own affairs without risk of disadvantage to themselves.

Proceedings for the appointment of a guardian are initiated at the Princely Court at the suggestion of the person concerned, their relatives or

close associates, a social institution or even *ex officio*. If a guardianship is established following the legally binding conclusion of the proceedings, the guardian is appointed for those matters in which the person concerned requires representation.

Legal representation includes representing the person concerned before offices, authorities and social insurance companies and asserting financial claims, managing assets and income. The guardian identifies themselves as a legitimate representative *vis-à-vis* the authorities, insurance companies and banks with the court order. The guardian shall ensure that at least the basic needs of the person concerned are met with the financial assets. The guardian responsible for the management of real estate shall be registered with the land register. The guardian is obliged to have residential buildings adequately insured by a building insurance company. The guardian is not obliged to take over the care and maintenance of the person concerned. However, they are obliged to make appropriate efforts to organise medical care and social support.

A disabled person can only consent to medical treatment if they are capable of understanding and judgment. Capacity of understanding and judgment is given if the disabled person is able to understand the reason for and significance of the medical treatment, to assess the consequences and risks of treatment and to determine their will accordingly. The guardian must obtain sufficient information from the attending physician before consenting to or refusing medical treatment. Medical treatment that is usually associated with a serious or lasting impairment of physical integrity or personality is only permissible if a medical expert, independent of the attending physician, confirms in a medical certificate that the disabled person does not have

the necessary capacity of understanding and judgment and that the treatment is necessary to safeguard their well-being. In the event of “imminent danger”, a medical doctor can carry out urgent medical treatment even without the consent of the guardian and the approval of the guardianship court. In principle, the guardian may not consent to the sterilisation of the person concerned. An exception to this prohibition exists if the life or health of the person concerned would be endangered without this intervention due to a physical ailment. Such decision requires a separate court approval.

A disabled person decides on their place of residence themselves. The guardian has no coercive powers. However, the guardian must take care of this task in so far as this is necessary to safeguard the welfare of the disabled person. The guardian cannot force the person concerned to actually reside at a newly determined place of residence.

Alternatives to guardianship are the help of the family or a privately authorised representative, in some cases assisted by care facilities or facilities for the disabled or within the framework of social or psychosocial services.

### 8.3 Elder Law

Liechtenstein social security laws, eg, obligatory private pension funds in addition to minimum pension protection for elderly people, obligatory health insurance for all citizens, cover the protection of elder people.

Municipalities manage retirement homes and residential homes for the elderly. For the future, Liechtenstein establishes a professional social security and health insurance system based on stable state finances and avoidance of public debt respectively.

## 9. Planning for Non-traditional Families

### 9.1 Children

Children born out of wedlock, adopted children and posthumously born children are treated like marriage-born children regarding inheritance. These children can also be part of the class of beneficiaries, subject to the provisions of the private foundation or the trust. Surrogate pregnancy arrangements are forbidden in Liechtenstein.

### 9.2 Same-Sex Marriage

On 1 September 2011, the Act on the registered partnership for same-sex couples entered into force. Hence, same-sex partnerships are permitted and recognised in Liechtenstein.

Parliament intends to introduce marriage for couples of different sexes and couples of the same sex under the same institution (*Ehe für alle*). Consequently, civil law relationships, including legal succession, tenancies and other personal matters, are treated equally between married couples, same-sex-partners and cohabitants.

## 10. Charitable Planning

### 10.1 Charitable Giving

Charitable contributions to legal entities are tax exempt from personal income tax if the receiving persons are also exempt from tax liability. The exemption is limited up to a maximum of 10% of the taxable income. Donations exceeding the total amount of CHF300 must be proven by disclosing the receipts.

Legal persons that serve only charitable purposes to the exclusion of any commercial activ-

ity are tax-exempt, eg, charitable foundations or trusts.

## 10.2 Common Charitable Structures

Liechtenstein offers a good environment for charitable structures. The total number of charitable foundations in Liechtenstein increased up to a total of 1,400 charitable foundations registered with the Liechtenstein Foundation Supervisory Authority.

Liechtenstein foundation law is characterised by the liberal attitude. Liechtenstein law does not impose any restrictions on the geographical area of activity of Liechtenstein charitable foundations. Even in the case of tax exemption, there is no requirement that a certain portion of the distributions must remain in the country. The prohibition on self-purpose foundations in Liechtenstein requires that charitable foundations are active externally. This means that the distributions should be higher than the costs. As no further specific requirements regarding the ratio of costs to distributions or detailed distribution ratios are imposed, this seems to be an advantage of the location compared to other jurisdictions whose more detailed requirements can often only do limited justice to the diversity of reality.

In principle, existing charitable foundations can transfer their registered office to or from Liechtenstein, provided that a comparable supervisory regime can be demonstrated. Accordingly, existing charitable foundations from abroad are often relocated to Liechtenstein.

Liechtenstein included a new option for philanthropic activities in 2015, the “protected cell company” (PCC). The PCC is a new organisational form under company law for existing legal entities or entities to be established. It is possible to set up a PCC as an umbrella organisation to pursue charitable purposes. Apart from the core element, the foundation as a PCC consists of one or more cells, also called segments. The assets of the individual segments are separated from each other and from the assets of the core - and remain separate. Each of the segments is subject to its own area of activity or purpose, which is described in more detail in the documents of the charitable foundation. One segment may be dedicated to environmental protection and another to pursuing social causes. Specific assets are allocated to each segment to achieve the purpose. One advantage of this new option for structuring a charitable foundation is, inter alia, limited costs and structuring of asset classes and purposes.