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**ESTABLISHING A BUSINESS ENTITY IN LIECHTENSTEIN**

**ILN CORPORATE GROUP**



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## ESTABLISHING A BUSINESS ENTITY IN LIECHTENSTEIN



### *“Establishing a Business Entity in Liechtenstein”*

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The Principality of Liechtenstein lies at the centre of Europe, nestled between Switzerland and Austria, next to the river Rhine.

The form of government is a constitutional monarchy established on democratic parliamentary principles. The head of state is the reigning Prince von und zu Liechtenstein, Hans-Adam II. Since 15<sup>th</sup> August 2004, his son, Crown Prince Alois, handles the government business.

A total of some 38,000 inhabitants live in 11 municipalities which cover an area of 160 km<sup>2</sup>. Approximately 34% of the inhabitants are foreigners. The official language is German, but English is widely spoken.

The Principality of Liechtenstein has been in a customs and currency union with Switzerland since 1924. For this reason, the official currency is the Swiss Franc (CHF). Furthermore, the Principality of Liechtenstein has been a member of the Council of Europe since 1978, a member of the UN since 1990 and a member of the European Economic Area (EEA) since 1995.

The most important economic sectors are the industrial and service sectors, which account for more than 94% of gross domestic product. The financial services sector alone accounts for 30% of this.

Liechtenstein offers ideal infrastructure for establishing business entities which includes liberal company law, an educated and experienced workforce together with efficient government and regulatory institutions.

Liechtenstein is also part of the Schengen free Travel Area.

### **Types of Entities**

#### *Company Limited by Shares (AG)*

At an international level, the company limited by shares is the most widely recognised legal form. When the Principality of Liechtenstein joined the European Economic Area, the legal framework for the company limited by shares was brought into line with applicable EU law.

The possible purpose of the company limited by shares covers all types of economic activity within the framework of the applicable statutory regulations, in particular

- international commercial transactions,
- property transactions,
- function as (intermediary) holding company.

The company limited by shares is a legal entity and is registered in the Commercial Register.

Under the articles of association, the minimum capital of a company limited by shares is 50,000.00 CHF/USD/EUR and must be deposited in cash at the time of formation.

The supreme body of the company limited by shares is the shareholder's meeting. The shareholders have a right to the profits and any possible liquidation proceeds.

In addition to registered shares, bearer shares may also be issued. Bearer shares must be deposited with a depositary instructed for this purpose.

The executive board, made up of one or more members, conducts the business and represents the company limited by shares externally. The members of the board represent the company solely or jointly.



The resolution of the supreme body to dissolve the company is followed by the liquidation. The deletion from the Commercial Register can take place after a fixed period of six months at the earliest.

The company limited by shares is obliged to keep accounts and must appoint an auditor. The balance sheets and notes assessed by the auditors must be submitted to the Commercial Register of Liechtenstein within 12 months of the end of the fiscal year and may be inspected by third parties.

### **Limited Liability Company (GmbH)**

A limited liability company is a corporation with legal personality which can be incorporated by one or more shareholders. The incorporation of a limited liability company is particularly suitable for small businesses because of the lower capital requirement of 10,000.00 CHF/USD/EUR. The entity is therefore also suitable for sole traders. Furthermore, the limited liability company is an internationally recognized company form and has the advantages of limited liability. The assets of the company are liable for the obligations of the company. The purpose of the company can be economic or non-economic but must conform to the law, common sense, and moral standards.

The General Meeting is the supreme organ of the company and takes place once a year. The shareholders are responsible for the management of the company unless other provisions are set out in the Articles. Management of the company can also be delegated to third parties.

A limited liability company must maintain orderly accounts which must be filed with the Commercial Register within twelve months of the financial year end.

The statutory minimum capital is 10,000 and can be in Swiss francs, Euros or US dollars. This can be paid in cash or by way of contribution in kind and must be available to the company at incorporation. The capital can be used by the company once it has been entered onto the Commercial Register. The statutes of a limited liability company can be in any form. However, simplified model articles of incorporation are available from the Ministry for Justice.

Incorporation is usually made by way of Public Deed. However, a simplified foundation process not requiring a Public Deed is also possible, provided that there are a maximum of three shareholders and there is only one manager of the company.

### **Establishment**

The establishment is a typical Liechtenstein legal entity under private law.

The establishment can be deployed either for commercial purposes such as e.g. the settlement of business or property transactions etc., or for non-commercial purposes such as e.g. investment and the administration of investments, holding investments and property etc.

The establishment is a legal entity and is entered in the Commercial Register.

Under the articles of association, the minimum capital for an establishment is CHF 30,000.00, or CHF 50,000.00 if the capital is divided into shares and must be deposited in cash at the time of formation.

The supreme body of the establishment is usually the founder or his legal successor, the owner of the foundation rights. His position is much like that of a proprietor. The founder's rights may be sold, inherited, assigned, or otherwise transferred at any time, but not pledged or otherwise encumbered. As a rule, these are documented in a so-called





“declaration of assignment”. If the capital is split into shares and, if stipulated in the articles of association, equity securities can be issued as an alternative.

The executive board, comprising one or more members, conducts the business and represents the establishment externally. The members of the board represent the establishment solely or jointly.

Beneficiaries of the establishment can be appointed by the founder or his legal successor. If no other beneficiaries are appointed, the founder or his legal successor is regarded as sole beneficiary.

The resolution of the supreme body to dissolve the establishment is followed by the liquidation. The deletion from the Commercial Register can take place after a fixed period of six months at the earliest.

If the purpose of the establishment permits commercial activities, then the establishment is obliged to appoint an auditor.

### **Trust Enterprise (Trust reg.)**

This type of entity has a distinctly Liechtenstein character and is extremely versatile. It may be structured in the manner of a corporation, or its main characteristics may be similar to a foundation and, as a result, may be used for commercial or asset management purposes. A trust enterprise can be formed with or without legal personality, although the latter is almost unknown in practice.

The highest organ of a trust enterprise is the settlor or his legal successor, i.e. the person who made the contribution of assets. The trust rights can be transferred, assigned, inherited, or encumbered.

The minimum capital stock is set at 30,000 CHF/EUR/USD. Only the assets of the trust enterprise are liable for the debts. The

beneficiaries are usually appointed by the settlor in the by-laws. If no beneficiaries are named in the statutes or in the by-laws, then the settlor is deemed to be the beneficiary. The transactions of the trust enterprise are conducted by the trustee council. It represents the trust enterprise externally and is the authorized signatory.

It is also possible to have a foundation-like trust enterprise which does not have settlors' rights. In that case the powers of the highest body are entrusted to the Board of Trustees. Therefore, there is also no supervision of the fiduciary council by a supreme body. However, a protector can be appointed to oversee the interests of the beneficiaries.

### **Foundation**

The provisions regarding the foundation are laid down in Art. 522 § 1 to 41 PGR (Law of Persons and Companies).

Possible aims of the foundation include:

- asset protection,
- settling the succession,
- securing the economic future of family members or other close individuals in the form of maintenance arrangements, for example,
- functioning as a holding to safeguard a corporate or real estate portfolio,
- perpetuating the life's work of the founder (e.g. art collections),
- charitable purposes.

In principle, the foundation may not pursue an active business run along commercial lines (e.g. trading business). Private foundations are not allowed to set up a commercial business, unless such business is necessary for the proper investment and management of foundation assets, e.g. management of participations in a



business. Charitable foundations may also set up a commercial business if this is necessary for attaining their charitable purpose.

The foundation is established by a founder dedicating assets to a specific purpose in favour of a specific or specifiable beneficiary. Once raised to the status of a legal entity, these assets no longer form part of the private assets of the founder but form the foundation assets.

The minimum capital required to establish a foundation is CHF 30,000.00.

Depending on the purposes of the foundation, common-benefit foundations are distinguished from private-benefit foundations.

Besides the registered foundation which comes into existence upon entry onto the Commercial Register, the so-called '*deposited foundation*' exists for private-benefit foundations. For the deposited foundation, no foundation documents must be filed with the Commercial Register. Therefore, this legal type offers utmost discretion.

The foundation has neither members nor an owner.

After the formation, the founder has only those rights which have been reserved in the articles or by-laws. Quite often the founder reserves the right to amend the articles and by-laws, and in particular the beneficiary regulations.

The usufructuaries of the foundation are the beneficiaries, whereby the payment of distributions to beneficiaries may also be made subject to conditions or rules. The beneficiaries are named by the founder, usually in separate by-laws, resembling a last will and testament. The founder can appoint himself as a beneficiary. In order to protect the rights of the beneficiaries, the law stipulates wide information rights towards the foundation council.

The foundation is administered by the foundation board, made up of at least two members who represent the foundation solely or jointly. The foundation board exercises the wishes of the founder as recorded in the articles and the by-laws. Therefore, the foundation board does not form any intent but only has a serving function.

The founder can vest the foundation board with the authority to execute the founder's will with free and absolute discretion, e.g. regarding distributions to beneficiaries (so-called discretionary foundation). The basis of this free and absolute discretion is always the founder's will, determined in the articles and by-laws of the foundation.

The founder may make provision in the articles of association for further bodies – such as an advisory board, a board of trustees or a protector – to advise and support the foundation board, e.g. when paying out distributions to beneficiaries. These may also exercise a controlling function.

The foundation is dissolved when the objects cannot be achieved anymore, especially when such objects are no longer achievable due to lack of adequate funds or as otherwise provided for in the law. This also applies when all of the foundation's assets have been distributed to the beneficiaries.

Furthermore, the founder can stipulate in the articles that the foundation can be dissolved at any time.

As a rule, the foundation is not obliged to appoint an auditor, except in the case of a charitable foundation.

### **Trust Settlement**

The Principality of Liechtenstein is the only continental European country to have included the common law trust in its legal system.



The trust is established by assigning assets to a trustee, subject to the condition that these assets will be administered in accordance with the wishes of the settlor, with any dividends benefiting specific individuals or institutions. Within the framework of the administration of the assigned assets, the trust may at any time acquire stakes in companies and exercise holding functions.

As in the case of the foundation, the trust can be used to secure assets over the long term and to settle the estate of the settlor.

The assets are not held by a legal entity. Instead, a contractual relationship is established with the trustee. However, the assets assigned to the trustee no longer form part of the assets of the settlor.

The settlor can designate himself as the beneficiary during his lifetime and can designate how the assets are to be used after his death.

### **Protected Cell Company**

The concept of a Protected Cell Company is a relatively new addition to Liechtenstein law. A Protected Cell Company is not a separate legal entity, but rather allows other entities to be split into different segments. Therefore, it allows for additional structuring possibilities under Liechtenstein law.

Possible uses include the allocation of specific assets or benefits to a specific segmented cell of an entity.

### **Steps and time to establish**

As a general rule, an entity will be formed in Liechtenstein by a licensed fiduciary. The fiduciary forms an entity in a fiduciary capacity in its own name, but on behalf of the client.

The formation of an entity usually does not take more than one week. Legal entities are formed by way of an incorporation deed and

articles of association which must be filed with the Commercial register. The types of companies outlined above may be formed by one individual or legal entity. The sole exception in this regard is the Company Limited by Shares whose formation requires two founders.

Commercial Registry fees are normally circa CHF 1,000.00, but will be higher if the share capital exceeds CHF 50,000.00.

The Company Limited by Shares, Limited Liability Company, the Trust Enterprise, and the Foundation subject to a duty to register, do not acquire legal personality until they have been entered onto the Commercial Register.

The deposited Foundation and Trust Settlement come into existence as early as upon the signature of the formation documents.

### **Governance/Regulation**

#### Highest governing body

All legal persons and the Trust Enterprise have a supreme governing body (the members meeting, the holder of founder's rights or another body) vested with the supreme powers, which include, for example, approving the annual accounts, passing resolutions on profit appropriation, appointing the other governing bodies, amending the articles of association, increases in share capital etc. As far as foundations are concerned, these powers are generally vested in the foundation council.

#### Management Organ

The management organ is the executive governing body of the entity. All legal persons must have an administrative council (board of directors, foundation council or manager) which, unless provided for otherwise, may consist of one or more individuals or legal entities or firms and is generally appointed by the highest controlling organ.



### Requirement for local directors/shareholders

It is generally required that at least one member of the administrative body be the holder of a Liechtenstein trustee licence. This does not apply to legal persons which are governed by the Trade Act or any other special Act and must have one qualified manager.

There is no requirement for Liechtenstein shareholders.

### Auditors

The appointment of an auditor is generally required for a Company Limited by Shares. Insofar as a (i) Limited Liability Company (ii) Establishment (iii) Trust Enterprise or (iv) registered Foundation operate a commercially active business or their purpose, as set out in the articles of association, allows such a business to be operated, they also require an auditor. An auditor must generally also be appointed for Foundations which are subject to supervision by the Foundation Supervisory Authority, e.g. charitable foundations.

### **Ongoing maintenance**

#### Accounting for companies engaging in commercial activities

Any legal person subject to a duty to register which operates a commercially conducted business is required to maintain proper accounts (i.e. draw up annual accounts consisting of a balance sheet, the profit and loss statement and notes (if any)). The company limited by shares and limited liability companies are required to keep proper accounts, even if a commercially conducted business is not operated.

Legal persons required to do accounting must draw up the annual accounts in the German language and must be denominated in Swiss francs, euros, or US dollars. The annual accounts must be filed with the tax

administration and, if necessary, with the Commercial Register on an annual basis.

#### Bookkeeping for entities not engaging in commercial activities

Legal persons not required to do proper accounting (deposited Foundations, Establishments and Trust Enterprises not engaging in commercial activities) as well as trust settlements must, taking into consideration the principles of orderly bookkeeping, maintain appropriate records of the financial circumstances and keep documentary evidence presenting a comprehensible account of the course of business and movement of assets.

Establishments, Trust Enterprises and registered Foundations which do not operate a commercially conducted business and whose purpose as laid down in the articles does not allow such a business to be operated must draw up an annual statement of assets and liabilities.

#### Representative

The legal representative is the official address for service of documents and provides a link to the domestic court and administrative authorities. The law does not require any legal representative for trust settlements.

### **Minority shareholders' rights and protection**

#### *General Meetings*

The general meeting of shareholders is the highest controlling organ of the Company Limited by Shares and Limited Liability Company. There must be at least one Annual General Meeting to approve the financial statements and deal with other statutory matters.

#### *Shareholder Complaints*

Shareholders have a general right of complaint to the ordinary Liechtenstein Courts. There is





no other supervisory authority, except for charities.

## Foreign Investment

### Investment fund centre

Modern and liberal investment fund legislation is one of the pillars of Liechtenstein's financial centre. A key expression of this is the Liechtenstein Investment Undertakings Act and the associated Ordinances.

Moreover, the Liechtenstein Collective Investment in Transferable Securities Act came into force on 1 August 2011. This had the effect of implementing the EU's UCITS IV Directive in Liechtenstein. The Act further strengthened access to the single European market for harmonised, standardised investment funds, known as UCITS (Undertaking for Collective Investment in Transferable Securities).

### Benefits of Liechtenstein as an investment fund centre

- **State-of-the-art investment fund centre:** The Liechtenstein Investment Undertakings Act ("IUG") came into force in the year 1996 and was extensively revised in the year 2005. This has given Liechtenstein a very modern, liberal, and client-focused legal foundation for investment funds. The Liechtenstein Undertakings for Collective Investment in Transferable Securities Act ("UCITSG"), which came into force in August 2011, strengthens access to the EU market for harmonised, standardised investment funds.
- **International compatibility of Liechtenstein investment funds:** Through its membership of the European Economic Area (EEA) and the implementation of all relevant EU Directives, Liechtenstein has created thoroughly unbureaucratic and

discrimination-free access to the European market.

- **Unbureaucratic establishment of investment funds:** Firstly, a fast and unbureaucratic approvals process involving the Liechtenstein Financial Market Authority ("FMA") is anchored in law. This also stipulates a maximum period for standard products. In addition, investment funds for qualified investors can also be set up quickly using a simplified approvals process.
- **Emphasis on investor protection:** The provisions of Liechtenstein investment fund legislation place a particular emphasis on investor protection. The business activities of investment fund management teams are monitored on an ongoing basis by the state supervisory authority and statutory auditors, who require approval from the Financial Regulator.
- **Individual solutions:** Liechtenstein investment fund legislation makes provision for highly customised solutions, including for individual investors, in particular under the heading of so-called "private label funds".

### Taxation

There is no withholding tax upon the payment of dividends or distributions by a Liechtenstein entity. Generally, corporation tax is charged at 12.5% of calculated net profit, subject to a minimum annual charge of CHF 1,800.00.

Subject to fulfilment of the necessary conditions, entities not engaging in economic activities can apply to the tax authorities for recognition as a Private Wealth Structure (PWS). A PWS is subject to a flat annual tax of CHF 1,800.00 and is exempt from ordinary corporate income taxation.



VAT is charged at a rate of 7.7%. There are no thin capitalization rules in Liechtenstein.

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*This Memorandum is for information purposes only and reflects Liechtenstein law in September 2018.*

*This Memorandum does not constitute legal advice and cannot replace personal consultation on a case-by-case basis. If you have any further questions about establishing a business in Liechtenstein or need general legal advice, please contact Egon Hug ([e.hug@advokatur.li](mailto:e.hug@advokatur.li)) or Martin Zech ([m.zech@advokatur.li](mailto:m.zech@advokatur.li)).*

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*Müller & Partner Attorneys at Law was founded in 1998 under the leadership of Dr. Wolfgang Müller and has developed into one of the most prestigious law firms in the Principality of Liechtenstein. The firm specializes in litigation matters and*

*represents clients before the Courts and other authorities in Civil, Criminal and Public Law. In this context Müller & Partner Attorneys advise and represent foreign and domestic private clients as well as corporations and, in relation to the latter, well-known insurance companies, banks, investment advisors, trust companies and investment companies. The firm also advises in all legal areas, including corporate structuring and taxation.*

*Müller & Partner Attorneys also have long standing relationships with licenced Trustees and Asset Managers who can provide any necessary fiduciary, accounting, audit, taxation, and asset management services needed to facilitate the establishment and maintenance of a new business entity. In particular the firm cooperates closely with its partner firm Juricon Trust Company Establishment which is based in the same office building as Müller & Partner.*

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