LIE-1 Geography

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Introduction

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Geography

LIE-1 The Principality of Liechtenstein is located between Switzerland and Austria at the intersection of the north-south and east-west lines of communication over the Alps. The country, which is German-speaking, is divided into 11 political municipalities and has a total area of 160 square km.

Footnotes

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LIE-2 A brief history

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A brief history

LIE-2 The origins of the Principality of Liechtenstein go back to the seventeenth century. In 1699 Prince Johann Adam Andreas of Liechtenstein acquired the lands of Schellenberg and in 1712 the county of Vaduz. In 1719 the title of Imperial Principality of Liechtenstein was conferred on the united territories by the Emperor Qiarles VI. After the collapse of the Holy Roman Empire, Emperor Napoleon I conceded full sovereignty to the Principality of Liechtenstein in the Acts of the Confederation of the Rhine.

After the Confederation's disintegration, the Principality of Liechtenstein joined the German Confederation as one of its founding members. In 1852 a Customs Treaty was signed with the Austro-Hungarian Empire. After the collapse of Austria-Hungary, Liechtenstein turned more and more towards Switzerland, and in 1923 a customs union was established between the two countries which is still in force today.

Political structure

LIE-3 Pursuant to the country's constitution, which came into force in 1921, Liechtenstein is a constitutional monarchy based on a parliamentary democracy, with the authority of the state vested in the reigning Prince and the people and exercised by both within the terms of the constitution. The official website http://www.liechtenstein.li/en provides ample information on the country's political system.

The reigning Prince is the head of state and as such the country's representative under international law. The Prince appoints the highest officers of the state, e.g. the members of government, on the basis of proposals submitted by Parliament. In the field of legislation the Prince has the right of sanction, that is to say, any bill passed by Parliament can only become law with the Prince's consent.

The citizens of Liechtenstein are involved in the process of government through the election of the 25 members of Parliament (the Landtag), as well as through initiatives and referendums. These rights are similar to those which exist in Switzerland. Parliament is elected on the principle of proportional representation. In addition to its legislative tasks, it also plays a role in the ratification of international treaties and is responsible for drawing up the annual draft budget and approving taxation. The link between the reigning Prince and the people takes the form of a five-member collegial government, consisting of the head of government and four ministers. They are appointed by the Prince at the suggestion of and in agreement with the Parliament. The government has executive power (exercised for example in the form of executive orders), has authority over the country's administration and supervises the various offices and agencies. In addition, the government is also involved in matters of administrative jurisdiction and is responsible for the political leadership of the country.

Since 2003, the Prince has had increased powers, including the power to dissolve parliament on specified grounds, and he can dismiss the government without making his reasons known. He may also rule using emergency decrees.

Liechtenstein's judiciary consists of courts of ordinary jurisdiction (Court of Justice, Court of Appeal, Supreme Court) for civil and criminal matters and of courts for administrative (Supreme Administrative Court) and constitutional affairs. Judges are proposed by a selection board and must be approved by parliament before their appointment. The country's constitutional court, the State Court (Staatsgerichtshof), created in 1925, has the capacity to invalidate unconstitutional laws and ordinances. In case of an alleged violation of the European Convention on Human Rights, an appeal to the European Court of Human Rights in Strasbourg can be lodged. The EFTA Court in Luxemburg is competent to give advisory opinions to Liechtenstein courts on the interpretation of European law.

The economy

LIE-4 After the Second World War, Liechtenstein developed rapidly from what was originally a purely agricultural economy to one of the most highly industrialised countries in the world.

The Principality of Liechtenstein has approximately 37,000 inhabitants (2013), of whom about 35 per cent are foreigners. Of the approximately 32,000 persons employed in Liechtenstein, more than half commute daily from Austria and Switzerland.

About 60 per cent of the workforce are employed in the trade and service sector, while 40 per cent work in industry and commerce. Agriculture accounts for a mere 0.8% of jobs now. Today Liechtenstein has a GDP totalling CHF 5.3 billion (2013), while earned income amounts to CHF 2.7 billion (2013). The country's exports are worth CHF 4 billion. Key figures can be found on http://www.as.llv.li (Office of Statistics).

The transition from an agricultural economy to a prosperous modern state was facilitated by a number of factors, such as the country's location, its stable legal system and economy, the high level of political stability, the existence of the customs, economic and monetary union with Switzerland, the membership of the European Economic Area and a system of taxation that is supportive of trade and industry.

Foreign policy

LIE-5 With regard to foreign policy, the Principality of Liechtenstein has greatly strengthened its position in the last few decades. It is a signatory state of the Organisation for Security and Co-operation in Europe (OSCE and formerly the Conference on Security and Co-operation in Europe CSCA) since 1975, and has been a member of the Council of Europe since 1978 and a full member of the United Nations since 1990. In addition, Liechtenstein is a member of a number of UN organisations such as UNIDO, UNCTAD and INTELSAT. Liechtenstein has accepted compulsory jurisdiction of the International Court of Justice. The country is also represented at the Universal Postal Union, the International Telecommunication Union, the International Atomic Energy Agency and the World Intellectual Property Organisation, among others. In 1991 Liechtenstein also became a full member of European Free Trade Association (EFTA) and a party to the 1972 free trade agreement signed between EFTA and the European Union (formerly the EC). In 1994, Liechtenstein became a full party to the World Trade Organisation (WTO).

On May 1, 1995 Liechtenstein acceded to the European Economic Area (EEA (http://www.efta.int/content/eea)). The EEA came into force on January 1, 1994 and unites all EU Member States and all EFTA member countries, less Switzerland. It therefore consists currently of the 27 EU Member States on the one side and Iceland, Liechtenstein and Norway on the other side and establishes an internal market governed by the same basic rules. These rules aim to enable goods, services, capital and persons to move freely within the entire EEA, thus fully extending the Four Freedoms of the European Union to the EEA/EFTA countries. However, the treaty does not extend to agriculture, taxation and customs duties.

For Liechtenstein, the maintenance of the country's special relationship with Switzerland (customs union, monetary union) was of paramount importance. Hence an additional protocol to the EEA treaty was signed laying down Liechtenstein's right to maintain its ties within the regional union with Switzerland, including the customs and monetary union as long as the efficient functioning of the EEA is not impaired. The solution, agreed in negotiations between

Liechtenstein and Switzerland and approved by the European Union, permits Liechtenstein to belong to two economic areas simultaneously. This special set-up has worked well since 1995. In 2011, Liechtenstein became a Schengen country, once the accession treaty was ratified by all Schengen countries. More information on Liechtenstein's ties with the European Union can be found at http://www.liechtenstein.li.

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LIE-6 Customs and monetary union with Switzerland

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Customs and monetary union with Switzerland

LIE-6 After the collapse of the Austro-Hungarian Empire, Liechtenstein withdrew from its customs treaty with Austria (1919) and contacted the Swiss authorities with a view to initiating negotiations on a customs union. On March 29, 1923 a treaty was signed to integrate the Principality of Liechtenstein into Switzerland for customs purposes. The treaty came into force on January 1, 1924.

As a result of this bilateral treaty, Liechtenstein now has the status of a Swiss domestic customs territory. This means that Swiss customs regulations and all Swiss legislation pertaining thereto apply in equal measure to the Principality of Liechtenstein. No customs duties may be charged at the internal border between Switzerland and Liechtenstein, and the movement of goods may not be hindered in any way. Customs administration in Liechtenstein is handled by the Swiss authorities.

In the framework of this customs treaty, Liechtenstein is also a party to all Swiss trade and customs agreements with other countries. On November 26, 1990 an amendment to the customs treaty was signed permitting Liechtenstein to act independently in signing treaties concerning the subject of the customs treaty with Switzerland and also to join international organisations of an economic character provided Switzerland is also a party to the treaty or a member of the organisation involved.

Following the conclusion of the customs treaty, Liechtenstein made the Swiss franc its legal tender (1924). In 1980 a treaty of monetary union with Switzerland was signed to protect the Swiss franc in both countries in equal measure and to promote closer ties in the field of monetary policy. Liechtenstein's monetary sovereignty is not affected by the terms of the treaty.

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LIE-7 Sources of law

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Sources of law

LIE-7 Lacking its own law school and a sufficient number of experts trained in law, it became necessary for Liechtenstein to adopt law from other jurisdictions. While at the beginning of this process, foreign law was taken into Liechtenstein jurisdiction almost without modifications, it became common practice in the course of time to modify and deviate from the original law to suit Liechtenstein's characteristics and needs.

Until the First World War, Liechtenstein almost exclusively adopted Austrian law. In the field of private law, for example, Liechtenstein implemented the Austrian Allgemeines Burgerliches Gesetzbuch (ABGB, General Code of Civil Law) in 1812, one year after it had come into force in Austria. No modifications were made with the exception of the law of inheritance. At the same time, Liechtenstein also adopted the Austrian Strafgesetzbuch (StGB, Penal Code). Initially, the Imperial Decrees amending the Austrian ABGB were automatically replicated by Liechtenstein. From 1843 onwards, Liechtenstein took over Austrian law only sporadically and, when it did, after a delay, and amendments and additions to existing laws were no longer adopted immediately. It was during this time that the Austrian Law of Inheritance and the Allgemeines Deutsches Handelsgesetzbuch (General German Commercial Code (ADHGB)), which had also been adopted by Austria, were made the law of the land in 1846 and 1865 respectively.

Between 1912 and 1915, the Austrian Zivilprozessordnung (ZPO, Code of Civil Procedure) and the Austrian Strafprozessordnung (StPO, Code of Criminal Procedure) were adopted, but with a number of modifications and deviations.

Because of the termination of the customs union with Austria after the First World War and Liechtenstein's economic orientation towards Switzerland, Swiss law began to play an important

role. The treaties concluded with Switzerland (in particular the Customs Treaty) meant that a number of Swiss federal laws became directly applicable in Liechtenstein, without any modification possible. In the field of private law, Liechtenstein adopted the Swiss Sachenrecht (Law of Property) In 1922 with few modifications. When creating the Liechtenstein Personen- und Gesellschaftsrecht (PGR, Persons and Companies Act) in 1926, the Liechtenstein legislator kept close to the Swiss original in the part of the PGR dealing with physical persons; however, other parts (legal entities; companies without legal personality; special endowments of property and common legal community; the public register, firms (trade names), and business accountancy) were adopted with considerable alteration. Legal institutions were incorporated into the PGR that are unknown in Swiss law, such as the "establishment" (Anstalt) and the trust, which follows the Anglo-American trust. By this, the Liechtenstein legislator wanted to provide people in business with as much freedom in organising their affairs as possible.

At that time, it was also planned to create new codifications of the other parts of private law (family law, the law of inheritance and law of obligations), but this was never done. In these fields of private law (as in criminal law) there is still a strong similarity to Austrian law.

As regards private law, the most important sources are the Allgemeines Bürgerliches Gesetzbuch (General Code of Civil Law) of June 1, 1811, the Sachenrecht (Law of Property) of December 31, 1922 and the Personen- und Gesellschaftsrecht (Persons and Companies Act) of January 20, 1926. All Liechtenstein legal provisions in their current wording are available on http://www.gesetze.li (in German only). Since all these codes are derived from foreign sources, Liechtenstein lawyers have to turn to legal doctrine and precedent of those countries when applying national law. Because of Liechtenstein's accession to the EEA in 1995, European Company Law has to be implemented in Liechtenstein like in all other EU countries. For example, all EU Company Law Directives are applicable in Liechtenstein and have been implemented into the Persons and Companies Act. Likewise, all Liechtenstein persons and legal entities can fully avail themselves of those directives and of the relevant case law of the ECJ on the freedom of establishment within the European Market.

In the field of tax law, the main sources are the Gesetz über die Landes- und Gemeindesteuern (Law of State and Municipal Taxes) of January 30, 1961, the Swiss Bundesgesetz uber die Stempelabgaben (Federal Law on Stamp Duties), which is applicable also in Liechtenstein due to the Customs Treaty, the Liechtenstein Finanzgesetz (Financial Act) published at the end of every year, and the Liechtenstein Value Added Tax Act of June 16, 2000. As at June 30, 2016, Liechtenstein has concluded double taxation agreements (DTAs) with Andorra (pending) Austria, Czech Republic, Germany, Hong Kong, Hungary, Luxembourg, Malta, San Marino, Singapore, Switzerland (limited in scope), the United Arab Emirates, United Kingdom and Uruguay. Furthermore, Liechtenstein has concluded or initialled Tax Information Exchange Agreements (TIEAs) with the United States, the United Kingdom, Germany, France, Monaco and Andorra. In addition Liechtenstein has TIEAs in place with Antigua, Barbuda, Belgium, Denmark, Faroe Islands, Finland, Greenland, Iceland, Ireland, Netherlands, Norway, Sweden, St Kitts and Nevis, St Vincent, and the Grenadines. More TIEAs will probably follow. Further information on

international tax agreements signed by Liechtenstein can be found on http://www.liechtenstein.li/en.

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LIE-8 General

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Legal persons and organisations

General

LIE-8 The Liechtenstein Persons and Companies Act ("Personen- und Gesellschaftsrecht" (PGR)) of January 20, 1926, supplemented by the Law of April 10, 1928 concerning the Trust Enterprise, includes a variety of legal institutions, be they legal entities or not that can be used as instruments for commercial activities, the administration of property, participation in other enterprises, inheritance planning, and similar objects. The intention behind this wide range of legal institutions is to impose as few limits as possible on economic organisation.

For that reason, the PGR contains many non-compulsory provisions, i.e. rules which only apply if no regulation to the contrary has been agreed upon.

As a consequence of Liechtenstein's membership in the European Economic Area, all Liechtenstein legal entities can take full advantage of the freedom of establishment guaranteed in the EEA treaty throughout the entire European Union. The relevant ECJ judgments (*Daily Mail, Centros, Überseering, Inspire Art, Sevic* and others) are directly applicable to Liechtenstein legal entities. The legal institutions contained in the PGR are divided into legal entities, companies without a legal personality, special endowments of property and the common legal community.

Legal entities are:

(a)associations (Vereine);

(b)companies limited by shares (Aktiengesellschaften);

(c)companies limited by shares, but having one or more general partners (Kommanditaktiengesellschaften);

(d)companies limited by participation (Anteilsgesellschaften);

(e)companies with limited liability (Gesellschaften mit beschränkter Haftung);

(f)co-operative societies (Genossenschaften);

(g)mutual insurance associations and relief funds (Versicherungsvereine auf Gegenseitigkeit und Hilfskassen);

(h)establishments (Anstalten);

(i)foundations: private or non-profit (Stiftungen); and

(j)public economy corporations (gemeinwirtschaftliche Unternehmungen).

Companies without legal personality regulated in the PGR are:

(a)simple partnerships (einfache Gesellschaften);

(b)commercial partnerships (Kollektivgesellschaften);

(c)limited partnerships (Kommanditgesellschaften);

(d)special partnerships (Gelegenheitsgesellschaften);

(e)silent partnerships (stille Gesellschaften); and

(f)Gemeinderschaften (joint property of family members).

The special endowments of property found in the PGR are:

(a)homesteads and Fideicommissa (Heimstätten und Fideikommisse);

(b)trusts (Treuhänderschaften); and

(c)trust enterprises/business trusts (Treuunternehmen).

Again, due to Liechtenstein's membership in the EEA, all legal entities created by European Regulations can be established in Liechtenstein, too. Currently, these are the European Company (Societas Europaea), the European Co-operative Society (Societas Cooperativa Europaea) and the European Economic Interest Grouping (EE1G). The same will apply to the future EU statutes for the European Private Company (Societas Privata Europaea) and for the European Foundation (Fundatio Europaea) when they are eventually established.

Names for any business entity must be approved in advance by the Office of Justice and are subject to the usual restrictions. The list of companies on the register can be examined so that a unique name can be chosen.

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LIE-9 Individual legal institutions

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Legal persons and organisations

Individual legal institutions

LIE-9 Among the numerous legal institutions regulated in the PGR, only a few have become of practical importance in legal life. For this reason, only these will be dealt with in the following.

Companies limited by shares

Definition and legal characteristics

LIE-10 The limited company, or corporation ("Aktiengesellschaft" in German) is a company with its own firm (trade name). Its capital is determined in advance and divided into shares. Only the company's assets are liable for the company's debts. Law firms can also be limited companies. These can be private or public companies.

The characteristics and the function of the Liechtenstein limited company are only marginally different from those applying in Switzerland or other countries in Europe. Liechtenstein has implemented all European company law Directives as required by the EEA treaty, which is why its corporation law is entirely in line with European standards. The relevant provisions are laid down in arts 261–366 of the PGR. The general provisions on legal entities included in arts 106–245 are also applicable.

Formation and existence

LIE-11

A limited company may be founded either by simultaneous or successive formation. The formation of a limited company requires the production of a Deed. Legal personality, however, is only acquired upon entry onto the Public Register(Öffentlichkeitsregister—http://www.oera.li). Initially, two founders, who can be nominees, are necessary. It is, however, possible to transfer all shares to a sole shareholder after the incorporation. Once the company is entered on to the Public Register, an extract from the Public Register is available providing information on the limited company such as trade name, object, capital, board of directors, etc. The articles of incorporation of the company, which have to contain the names of the founders, who can be nominees but not those of the shareholders, are to be submitted to the Public Registry. The Public Registry then publishes the fact of registration and some supplemental information on the company. In case of mere domicile companies, only a note about the formation and the submission of the relevant documents will be published in an official journal and on http://www.oera.li. The names of the shareholders or other beneficial owners of the company need not be disclosed to the Public Register, nor to any other Liechtenstein authority (this also applies to the other legal institutions discussed in the following). Such information might only be released to public authorities in case of reporting duties under due diligence obligations or within the context of legal or administrative assistance in criminal and tax matters.

Capital

LIE-12 The capital of the limited company must be at least CHF50,000 approximately €45,690. This minimum capital must be fully paid up by the subscribers in cash or in kind. The minimum amount that can be subscribed by any one shareholder is CHF50.

Shares

LIE-13 The share capital may be divided into bearer or registered shares; however, registered shares must not be issued until the capital has been fully paid up. Furthermore, the capital of each share has to be paid up to a minimum of 25 per cent once the minimum capital is fully paid. Bearer and registered shares may be par value shares (issued for a certain amount of the total share capital) or non-par value shares (issued for a certain quota of the share capital). Furthermore, the bearer or registered shares may be issued as common or preferred stock.

Bearer shares are transferred by delivery of the share title to the purchaser. Bearer shares still exist in Liechtenstein but there is an obligation to register transfers of bearer shares in a public register at the company's registered office. They also must be fully paid up. With registered shares, it is necessary not only to deliver but also to endorse the share title correspondingly (endorsement in blank is sufficient). In order for the purchaser to obtain voting and economic rights, he must be entered in the share registry of the company (company ledger). However,

the transfer of registered shares may be limited or precluded in the company's articles (restricted endorsability).

Whether bearer or registered shares are issued in an individual case is a matter of free discretion.

Organisation

LIE-14 A company limited by shares is generally organised on the following basis:

(a)general meeting of shareholders;

(b)board of directors;

(c)auditors.

The General Meeting of shareholders is the limited company's supreme body. Its powers include the appointment of the board of directors and the auditors, as well as the formal approval, if necessary, of the actions of the board and the approval of the (consolidated) annual business report. An ordinary meeting has to be held once a year.

The Board of Directors' responsibilities include the whole conduct of business and the representation of the limited company in court and out of court in all matters that may in any way result from the object of the company. A minimum number of directors is stipulated only for limited companies with a share capital of at least CHF1 million. In this case, the board must have at least three members. The members of the board of directors need not be shareholders. Meetings of the board of directors (as well as general meetings of shareholders) may take place within the country or abroad.

Regardless of the object of the limited company as laid down in its articles, and regardless of whether or not the company engages in commercial activities, it is mandatory that an audit authority be appointed by the general meeting. Its task is to examine the bookkeeping of the company for regularity and correctness, and to present a written audit report to the general meeting. Acting as an audit authority on a commercial basis requires certain qualifications laid down by law.

Bookkeeping

LIE-15 Regardless of the object of the limited company or the business activities conducted by it, there is not only an obligation to employ an audit authority, but also to keep books. Limited companies have to draw up a so-called business report, which consists of the annual account (balance sheet, profit/loss account, relevant notes) and the annual report of the board. Unless exempted, a limited company with a dominant influence over a subsidiary due to a majority in voting rights has to draw up a consolidated business report. The annual

audited accounts audited by the audit authority must be filed with the Liechtenstein Tax Administration within six months of the end of the financial year. Moreover, the approved annual account and the audit report have to be submitted to the Public Register Office not more than 15 months after the end of the financial year. They are publicly available from the Public Registry (http://www.gboera.llv.li). The filing has to disclose the decision about how to dispose of the generated profit. The legal representatives of the company have to publish the registration number under which the documents have been filed with the Public Register Office. Companies listed on the stock exchange have to publish the aboved mentioned documents in the official journal first and must notify the Public Register Office thereof under enclosure of all relevant documents.

Miscellaneous

LIE-16 Usually, a limited company appoints a legal representative who acts as a person authorised to accept service for the company. Liechtenstein company law allows a transfer of the limited company's domicile to other countries without prior dissolution of the company in Liechtenstein. This does, however, require the prior approval of the Liechtenstein Public Registry, which usually poses no problems.

Establishments

LIE-17 The establishment, called "Anstalt" in German, is a form of private law legal entity which is unique to Liechtenstein; it was created on the basis of public law institutions, the Austrian Law on Public Economy Institutions of 1919, and as a reaction to requirements in practice. As stipulated by the PGR, the establishment stands between a corporation and a foundation. The relevant provisions on the establishment are laid down in arts 534–551 of the PGR. The general provisions on legal entities included in arts 106–245 are also applicable.

Definition and legal characteristics

LIE-18 In most cases, the establishment capital is not divided into shares. Consequently, this legal form of establishment has no members, partners or shareholders. It is an independent property with legal personality, and only the assets of the establishment are liable for its debts. The following comments only refer to this legal form of establishment.

Formation and existence

LIE-19

The founders of an establishment may, (as with a limited company) be physical persons or legal entities, national or foreign citizens resident or domiciled within Liechtenstein or abroad. One single director is sufficient.

To obtain legal personality, the establishment must be entered in the Liechtenstein Public Register. Following this entry, an extract from the Public Register is available just as with the limited company (see para 11 *above*).

Capital

LIE-20 The minimum capital of an establishment is SFr 30,000, which amount must be fully provided for at the time of formation (be it in cash or in kind). In the unlikely event of the Anstalt having shares (which is very rare in practice), then the minimum share capital is CHF50,000.

Founder's rights and beneficial interest

LIE-21 With a limited company, the founders receive shares from the company as a consideration for providing the share capital. The founders of an establishment receive so-called founder's rights (Gründerrechte), unless its articles do not provide for such.

In contrast to shares, founder's rights do not constitute a security. They confer the fundamental rights in the establishment, e.g. the power to approve the annual accounts, to appoint the administrative bodies, to dissolve the legal entity etc. Despite these legal characteristics, the founder's rights in an establishment may be transferred freely (just like shares) by transaction inter vivos and mortis causa. In contrast to shares, however, the founder's rights cannot be pledged or otherwise encumbered.

Liechtenstein legislation leaves it to the establishment to decide who shall receive its net profit. This is done in the articles or by-laws. The establishment can therefore determine its beneficiaries without restraint. At the same time, however, Liechtenstein law stipulates that if, and as long as, the establishment has not determined such beneficiaries, the holders of the founder's rights shall be the beneficiaries.

Since the articles of an establishment usually provide that the holders of the founder's rights shall be authorised to appoint the beneficiaries, it is, therefore, at their discretion whether they want to make use of their right to appoint beneficiaries or let the presumption of the law take effect. In the latter case, the position of holders of founder's rights is somewhat similar to that of shareholders despite the different legal characteristics of shares and founder's rights.

Just like the limited company, the establishment may, with some exceptions (such as when acting as a bank), have any legally permitted object. In contrast to the limited company,

however, the object of an establishment is of special legal importance as regards its organisation and its obligation to keep books.

Bookkeeping

LIE-22 Establishments that engage in commercial activities, or whose object as laid down in their articles permits such activities, have to employ an auditor and file accounts just like limited companies. They have to keep orderly books and file their audited accounts annually (audited by the audit authority) with the Liechtenstein Tax Administration. Unlike limited companies, establishments do not have to disclose their books to the Public Registry.

Establishments whose articles exclude any commercial activities and which do not engage in such activities (for example holding companies for assets patents estate assets or royalties, investment management companies) do not need an audit authority and are not required to keep books according to the strict financial reporting rules. Their only obligation is to prepare an annual statement providing sufficient information on assets and liabilities. Furthermore, they have to file a statement with the Public Registry Office within six months of the end of the financial year (although not with the Tax Administration) confirming that during the past financial year they did not engage in commercial activities and that a statement of assets and liabilities was prepared.

Organisation

LIE-23 An establishment's business is conducted by the board of directors, which also represents the establishment before third parties. No minimum number of directors is stipulated.

Usually, the holders of the founder's rights form the supreme governing body of an establishment. However, it is also possible to structure an establishment in such a way as to make the board of directors the supreme-body. In this case, the board of directors is not only authorised to conduct business and represent the establishment, but also possesses the powers normally reserved for the supreme body of a legal entity. In this case it is necessary to appoint beneficiaries, since the presumption of law making the holders of the founder's rights the beneficiaries cannot take effect if such holders are lacking.

Miscellaneous

LIE-24 Establishments usually have a legal representative. Transferring the domicile of the establishment abroad (with the prior consent of the Liechtenstein Public Registry) is possible, but there is the problem that this legal entity is only known in Liechtenstein. It is therefore necessary to transform the establishment into another type of legal entity (e.g. to a company

limited by shares) before making the transfer. This can defeat the purpose of having the Anstalt in the first place.

Foundations

LIE-25 The Foundation ("Stiftung" in German) is not a legal institution that was invented in Liechenstein. Various legal forms of foundation existed in the Roman and Germanic legal systems. When the Liechtenstein legislator drafted the rules governing foundations in 1926, it was done with the intention of creating a legal entity allowing a person in business to reserve part of their assets for certain purposes, whether it was to protect family members against the ups and downs of life, or for charitable purposes, or in order to ensure that charitable actions continue to be associated with his or her name even after death.

The then legislator also correctly assumed that such a legal institution could only be successful if it was flexible enough to allow for private variation.

Definition and legal characteristics

LIE-26 Liechtenstein foundation law dates back to 1926 and has contributed substantially to the economic success of Liechtenstein. The foundation laws of Austria, Panama and, more recently, Jersey, are all modelled upon the Liechtenstein provisions. The last few years, however, showed that some important topics in Liechtenstein law were not regulated in a sufficiently clear manner. This is why in 2001 the Government started proceedings to reform the applicable provisions. Internationally renowned specialists in foundation law, mainly from the universities of Zurich and Vienna, were commissioned to draft a completely new act incorporating the most recent international developments regarding Foundation Governance. The government also built heavily on the Liechtenstein market players to ensure that the revised law served the needs of the market. This finally lead to the passing of the new law in Parliament in June 2008. It entered into force on April 1, 2009. The relevant provisions are laid down in art.552, para.1-41 of the PGR; the general rules on legal entities included in arts 106–245 are also applicable. An official English translation of the new statutory provisions, as well as an overview about the new foundation law in English, is available at http://www.marxerpartner.com.

A foundation is defined as a legally and economically independent special-purpose fund which has some characteristics reminiscent of a trust. A foundation is formed as a legal entity through the unilateral declaration of the founder. He creates the foundation by signing a foundation declaration which must be in writing. The founder allocates the specifically designated foundation assets and stipulates the purpose of the foundation and its beneficiaries. Only the foundation's assets are liable to the foundation's creditors for its debts. The

foundation may have any name and must be registered with the Commercial (Public) Registry. The Liechtenstein foundation is characterised by the following features:

(a)In contrast to a limited company, a foundation does not have members, participators or shareholders. Following its formation, the founder does not possess any such rights nor does he have the rights usually granted to the founder of an establishment, similar to the settlor's relationship to a trust.
A foundation is an independent body, the sole objective of which is to provide benefits from its assets to relevant persons. The founder himself may be among these beneficiaries; he may even be the sole beneficiary of the foundation.

(b)The capital the founder has to dedicate to the foundation when it is formed must be at least CHF30,000 and must be paid in by the founder for a specific purpose. The special feature of the Liechtenstein foundation is that its purpose does not necessarily have to be charitable. A charitable foundation is a foundation whose activity is entirely or predominantly intended to serve common benefit purposes. By contrast, a private foundation is a foundation which, according to its charter, is entirely or predominantly intended to serve private or personal purposes. The most important example is the family foundation. So-called "pure family foundations" are foundations whose assets exclusively serve to defray the costs of the upbringing or education, provision for or support of members of one or more families or similar family interests. "Mixed family foundations" are foundations which predominantly pursue the purpose of a pure family foundation but supplementally also serve common benefit or other private-benefit purposes. A mixed family foundation is allowed to make grants to the beneficiaries without any specific objective requirements having to be met.

(c)As a legal entity, the foundation needs its own organisation, which is generally the foundation council. Its powers include the conduct of business and representation before third parties, but also the powers of a supreme body. With corporations and establishments, the supreme body decides on the object and the existence of the legal entity and is therefore a self-determinatory body. The task of the foundation council, however, is to strictly implement the intentions of the founder. No minimum number of foundation council members has been stipulated by statute. Charitable foundations have to appoint an auditor and are subject to the supervision of the Foundation Supervisory Authority ("Stiftungsaufsichtsbehörde" or STIFA; see http://www.gboera.llv.li). Private foundations that are not engaged in commercial activities do not normally need an auditor and are not subject to supervision by the STIFA.

Founder

LIE-27 Any physical person or legal entity can be the founder of a Liechtenstein foundation. No importance whatsoever is attached to nationality, residence or domicile. The founder will generally determine the purpose of the foundation and decide who the beneficiaries are to be. This will be set out in the foundation declaration.

When the foundation's assets are transferred from the founder to the foundation, these assets cease to be the property of the founder and, from that time, represent the foundation fund. In

the foundation deed, the founder may reserve for himself the right to revoke the foundation or to amend the declaration of establishment. These rights cannot be assigned or bequeathed.

Beneficiaries

LIE-27A Every person or legal entity drawing or possibly drawing an economic advantage from the foundation is a beneficiary, regardless of whether the obtainment of such beneficial interest is linked to a condition or any other restriction. The beneficiaries or potential beneficiaries will be set out in the foundation document but their rights will be determined by the articles of association or by laws of the foundation. There are three types of beneficiaries: the beneficiary with a legal claim, the beneficiary without a legal claim (discretionary beneficiary) and the ultimate beneficiary. If there is no ultimate beneficiary determined or determinable, the assets remaining after the liquidation of the foundation pass to the Principality of Liechtenstein. The founder may be a beneficiary and is the beneficiary by default if no other beneficiaries are designated.

Beneficiaries, being the addressees of a foundation, have certain rights of information. A beneficiary is entitled to inspection of the foundation charter, the by-laws and regulations and is also entitled to information and reporting on the asset situation. This comprises the right to make copies and to examine all matters of the foundation, including the asset situation, personally or through a representative. The right of information is subject to three restrictions. First, the right to information of a beneficiary exists only insofar as his own rights are concerned. This restriction is relevant especially regarding members of the class of beneficiaries of discretionary foundations. Secondly, the right of information must not be used in an improper way or in a way intended to harm the interests of the foundation or other beneficiaries. Thirdly, in exceptional cases the right of information may be refused in order to protect the beneficiary.

If the founder reserves the right to revoke the foundation and determines that he be the ultimate beneficiary in this case, (that is to say that the foundation assets revert to him in case of revocation), then the beneficiaries do not have any rights of information. The rationale of this rule is that the foundation governance remains with the founder in this case. Besides, a Control Body can be provided for in the foundation documents upon formation. In this case a beneficiary can only ask for information regarding the object and the organisation of the foundation as well as his own rights vis-à-vis the foundation. The control body has to comply with certain criteria as to independence. In case of irregularities the control body has to report to the beneficiaries and to the court. An auditor or the founder himself can form the Control Body. It can also consist of one or more persons with sufficient knowledge in the field of law and economics. Finally, the beneficiaries do not have any right of information in case of foundations supervised by the STIFA. This is the case with charitable foundations as well as with private foundations put under voluntary supervision.

Existence

LIE-28 Charitable foundations have to be entered onto the Public Register in order to acquire legal personality. Private foundations, e.g. family foundations, need not be registered and they become legal entities by the mere execution of the foundation deed. However, the foundation council and the representative whose role is disclosed below, have to deposit a so-called Notification of Formation with the Public Register. The Notification of Formation has to contain, among other information, the name, domicile, object and date of formation of the foundation; personal data regarding the members of the foundation council and the representative; and a confirmation that the beneficiaries or the class of beneficiaries were determined. In case of a change of such information a Notification of Modification has to be deposited with the Registrar. The correctness of the information contained in each Notification has to be confirmed by a Liechtenstein attorney or professional trustee. Based on this information the Registrar issues a Public Confirmation (Amtsbestätigung) about the notification. The law authorises the Registrar to examine the correctness of all declarations. He has the right to ask the foundation for information and is authorised to execute inspections, mainly through the use of an auditor.

Purpose

LIE-29 The founder has to indicate the purpose for which he is endowing the assets. This purpose may be chosen freely, provided it is not unlawful or immoral. Generally, the foundation is not allowed to engage in any commercial activities. However, a foundation may engage in commercial activities if these serve its charitable purpose and if there is a close coherence between the commercial activities and the purpose. For example, a foundation whose purpose is the promotion of arts may run an art museum. Besides, every foundation may hold and administer participations in other companies even if commercial activities are necessary because of the manner and the extent of these participations. However, a foundation is not permitted to be an unlimited partner of an enterprise.

Bookkeeping and auditor

LIE-30 As explained above, charitable foundations are subject to supervision by STIFA. The same applies to private foundations which are subject to supervision pursuant to a provision in the foundation deed. For each supervised foundation, the court appoints an auditor who must be independent of the foundation council and other foundation bodies. Private foundations, especially family foundations, do not have to appoint an auditor. Foundations which engage in commercial activities are subject to the general rules on accounting. They are obliged to keep books and must file the annual audited accounts with the Liechtenstein Tax Administration.

In the case of all other foundations the foundation council has to maintain appropriate records of the financial circumstances of the foundation and keep documentary evidence presenting a comprehensible account of the course of business. The council also has to draw up an annual Statement of Assets and Liabilities.

Miscellaneous

LIE-31 The current Liechtenstein foundation law, in effect since April 1, 2009, emphasises the importance of Foundation Governance. This is why charitable foundations are subject to supervision by the Supervisory Authority (STIFA). If the STIFA wants to take measures against a foundation or its council, it has to file a pertinent application in court. It is then up to an independent judge to decide on any coercive measures. As to private foundations, which are not subject to supervision by STIFA unless otherwise stated in the foundation deed, all beneficiaries and the members of foundation bodies can directly address the court to obtain equitable remedy against alleged wrongdoing of the foundation council or other organs.

The law expressly permits the transfer of domicile of a foundation abroad without prior dissolution in Liechtenstein, subject to approval of the Liechtenstein Public Registry.

Commercial partnerships

Definition and legal characteristics

LIE-32 A commercial partnership (Kollektivgesellschaft), regulated in arts 689–732 of the PGR, is defined as the union of two or more physical persons or legal entities under a common firm (trade name) with the purpose of running an enterprise, each partner being liable personally, jointly and severally and not limited to a certain amount. A Commercial Partnership is a company without legal personality.

Formation and existence

LIE-33 The formation of a commercial partnership requires a written partnership agreement between the partners. However, a commercial partnership does not exist until it is entered in the Public Register. The names and addresses of the partners, the firm, the domicile, the object of the commercial partnership and detailed information on representation before third parties have to be entered.

Capacity to acquire property and to sue or be sued

LIE-34 The Commercial Partnership may acquire rights, enter liabilities and purchase assets under its trade name. It is able to sue and be sued in court and before administrative authorities as a party, but not as a witness.

Representation before third parties

LIE-35 Each partner is authorised to carry out all kinds of legal acts and transactions that are included in the object of the partnership with the sole exception of selling the enterprise as a whole. This is true unless a partner is excluded from representation in a legally valid way.

By such legal acts and transactions, the partnership itself becomes entitled and under obligation (and not all the partners personally).

Excluding a partner from representation as well as limiting his ability to represent requires a corresponding provision in the partnership agreement and an entry in the Public Register. Without this entry in the Public Register, such exclusion or limitation is without legal effect towards bonafide third parties.

Liability

LIE-36 All partners are jointly and severally liable for the debts of the partnership with all their personal assets. However, an individual partner may only be held liable for the partnership's debts if the partnership's assets are insufficient for paying them or the partnership or the individual partner becomes bankrupt. New partners are jointly and severally liable for debts entered into by the partnership before their joining. Leaving partners are liable for another five years unless a shorter term of prescription applies due to the nature of the debt.

Dissolution

LIE-37 A commercial partnership is dissolved by bankruptcy of the partnership, by termination by a trustee in bankruptcy in case of bankruptcy of a partner, by a special creditor of a partner giving notice and thus terminating the partnership (if particular requirements are met), or by one partner leaving the partnership. Generally, the partnership agreement will make provision for such eventualities.

In cases in which the reason for dissolution concerns only one partner, the partnership may be continued if so agreed in advance. (In this case, the partner concerned will withdraw from the partnership). The partner concerned may also be expelled from the partnership. A partner who has withdrawn or been expelled is entitled to be indemnified.

Continuation with heirs

LIE-38 The partnership agreement may provide that in case of a partner's death, the partnership shall pass to his heirs.

Miscellaneous

LIE-39 As opposed to the partnership as described before, Liechtenstein company law also provides for a sort of limited partnership (arts 733–755: Kommanditgesellschaft). The partners can limit their liability to the extent of their participation. However, at least one partner, who can also be a legal entity with limited liability (e.g. a company limited by shares), has to be legally responsible with his entire private assets and cannot limit his liability.

Trusts

Background

LIE-40 Liechtenstein is, so far, the only country on the European continent which, as early as 1926, adopted a codified trust law based predominantly on the Anglo-American trust. The legislator mainly followed the English Trustees Act 1925 and as such the English Common law model was followed. However, corresponding foreign precedent and literature was also considered, e.g coming from the United States of America. Liechtenstein trust law can be found in arts 897–932 of the PGR. In 2009, the law on trusts was updated.

Definition and forms

LIE-41 Liechtenstein trust law defines a trust ("Treuhänderschaft" in German; however, the word "trust" is commonly used) as a legal relationship in which a physical or legal person (trustee) receives movable or immovable property or a right (trust property) from another person (settlor) with the obligation to administer and/or make use of it in his own name as an independent legal owner for the benefit of one or several third parties (beneficiaries) with effect towards all other persons.

According to this statutory definition, the private express trust, i.e. a trust created by an act of a party or parties with beneficiaries specifically determined or determinable, is the typical Liechtenstein trust.

Although this form was not included in the statutory definition, Liechtenstein trust law also recognises the "purpose trust", and in contrast to the British purpose trust, it is possible to form this kind of trust for any object unless this object is unlawful or immoral. Liechtenstein trust law also recognises the "trust by operation of law" (constructive trust) as well as the "resulting trust".

The following comments refer to the typical trust of Liechtenstein trust law (private express trust).

The possible variations of Liechtenstein trusts are as manifold as those of the Anglo-American trust (fixed trust, discretionary trust, voting trust, family trust, business trust, grantor trust, etc).

Special characteristics

LIE-42 Among others, Liechtenstein trust law has the following characteristics:

(a)There is no rule against perpetuities which is why a trust may be created for any given period of time.

(b)An accumulation of income without any time limit is permitted.

(c)The trust deed may limit and even exclude the free disposal of beneficiary rights and, under certain circumstances, the beneficiary's creditors may be deprived of access to the beneficiary rights by way of enforcement or bankruptcy proceedings.

(d)Every trust that has been created with a duration of more than 12 months must be entered in the Public Register within 12 months of its formation, or the trust deed must be deposited with the Public Register Office. This is a mere administrative rule and only serves to notify the authorities (and in particular the tax authorities) of the legal existence of the trust. If the trust is registered with another register such as the Land Registry or the Patent register then it may be possible to have the requirement to register with the public registry waived.
If the Trust is entered in the Public Register, an extract from the Public Register is prepared containing the name of the Trust, the date of its formation, the duration of the Trust, and the names and addresses of the trustees, and their head office. A confirmation of payment of the annual taxes must also be filed.

(e)As regards the trustee's liability for the debts entered into by him on account of the trust property, the rules state that the trustee is personally and fully liable for these debts but only if and to the extent that the debts are not covered by the trust property. However, the trustee may, if held liable, have recourse to the settlor, unless this has been excluded in the trust deed. The liability of the trustee with his private assets is excluded if he can prove that the third party did not rely on his personal unlimited liability. This is the case if the trustee mentions that he acts in the quality of trustee.

(f)Trusts may be formed according to foreign law. So it is possible to have a Liechtenstein trust which is formed under English or US law. Thus the foreign law jurisdiction will

govern the relationship between the settler trustee and beneficiaries. However, the law of Liechtenstein will govern the relationship between the trust and any third parties. If the trust property is in Liechtenstein, the sole trust or at least half of them are resident in Liechtenstein or the application of Liechtenstein law is expressly provided for, then the trust is a domestic trust.

Formation and existence

LIE-43 A party wishing to create a Liechtenstein trust may do so by means of:

(a)a written agreement (trust agreement) between settlor and trustee;

(b)a unilateral written act by the settlor and a written acceptance by the trustee; or

(c)a last will;

as well as a disposition of the assets determined to be subject to the trust (transfer of assets to the trustee in accordance with applicable formal rules).

Substantive requirements

LIE-44 Regarding the substantive requirements of the trust relationship, the law leaves considerable freedom of choice to the settlor in drawing up the trust deed. The trust deed must meet the requirements of:

(a)certainty of intention (the intention of the settlor to create a trust must be expressed unequivocally);

(b)certainty of subject (the trust property must be designated in a way making it easily identifiable);

(c)certainty of objects (the beneficiaries and their rights must be identifiable from the trust deed).

Parties concerned

LIE-45 Usually, the parties concerned in a trust are:

(a)the settlor;

(b)the trustees;

(c)the beneficiaries.

However, further parties concerned may be provided for in the trust deed, for instance, a protector.

Settlor

LIE-46 Any physical or legal entity, national or foreigner with residence or domicile anywhere, may be the settlor. By way of the trust deed, the settlor places any given part of his assets under the control of the trustee(s) to be designated by him, and lays down the further provisions of the trust. He is then bound by the terms of the trust instrument.

Trustee

LIE-47 A trustee, too, may be any physical or legal person, national or foreigner with residence or domicile anywhere. One trustee is sufficient. However, one of the trustees must be resident in Liechtenstein or be a Liechtenstein legal entity.

It is the duty of the trustee to administer and to make use of the trust property in his own name as an independent legal owner in relation to anybody and for the benefit of the beneficiaries. He must not act contrary to the directions given in the trust deed. As an independent owner, he has an absolute right to the trust property in relation to the third parties. Due to liability reasons (see above), the trustee should, however, mention that he acts in his position as trustee and not on his personal account.

The duties of the trustee concerning the administration and the usage of the trust property can be summarised as follows:

(a)duty of care;

(b)duty to act collectively if more than one trustee is appointed;

(c)duty of personal performance;

(d)duty to avoid conflicts of interest;

(e)duty to keep books, to render account and to provide information;

(f)duty to treat all beneficiaries equally;

(g)duty to safeguard the permanent existence of the trust property.

A major part of the trustees' duties as stipulated in the law may be regulated differently by the settlor in the trust deed.

Beneficiaries

LIE-48 It is a right of the beneficiaries that the trustees execute their powers and duties in accordance with the provisions of the trust deed. The settlor may also be a beneficiary of the trust; the

trustee, however, must not be the sole beneficiary. According to the trust deed, beneficiaries may either be absolutely entitled to the trust property (vested beneficiaries entitled to income and/or capital) or may simply have the hope that the trustees will execute their powers to their benefit (discretionary trust). Furthermore, they also have a right to be kept informed by the trustees as well as to inspect the trust documents and the books of the trust. However, this right can be limited.

If a trust puts limitations on disposals and/or encumbrance of trust property, the beneficiaries have the right to demand from third parties the delivery for the benefit of the trust property of assets belonging to it, if these assets were acquired by the third party from the trustee, the latter having disposed of them in breach of trust without due consideration, be it in good or bad faith, but knowing that these assets belong to the trust property (right to follow the trust property). Furthermore the beneficiaries may claim damages in the name of the trust if the trustees have acted in breach of trust.

Seizure by creditors:

LIE-49

(a) Trustee:

Although the trustee has an absolute right to the trust property, the trust property is absolutely inaccessible to the private creditors of the trustee. It is considered as separate property and has to be set aside ex officio from the trustee's assets in case of execution against or bankruptcy of the trustee.

(b) Beneficiaries:

For creditors of beneficiaries to be able to bring a claim against the trust property, the beneficiaries must themselves have a legal claim to the trust property. In family trusts, the trust deed may provide that the beneficiaries cannot be deprived of their beneficial interest.

(c) Settlor:

Creditors of the settlor or his legal successors may only bring a claim against the trust property if and insofar as the requirements pursuant to the Anfechtungsordnung (Creditors' Avoidance of Transfers Act), the manner of transfer (e.g. donation) or the requirements pursuant to the Law of Inheritance are met.

The provisions of donation law as regards avoidance are of no practical significance.

The Liechtenstein Law of Inheritance guarantees close relatives as well as the spouse or civil partner of the testator a certain quota of the value of the estate (forced heirs or persons entitled to a compulsory portion). In order to avoid a testator in part or wholly circumventing Forced Heirship Rules by donations, such donations are considered upon request when the

compulsory portion is calculated. However, not all donations the testator made when still alive can be taken into account.

If the estate is insufficient to cover the compulsory portion for donation {Schenkungspflichtanteil), i.e. the amount by which the compulsory portion has been increased by taking into account the donations, then the forced heir is entitled to demand from the donee the payment of the difference. Therefore, a trust that is created in violation of a claim for a compulsory portion is not void, but under certain circumstances the damaged forced heir may be entitled to receive a certain amount of money from the trust property (i.e. the donee).

In the legal assessment of such avoidance claims concerning inheritance, it is always necessary to find out which law governs the requirements for avoidance. If the probate proceedings are not within the jurisdiction of Liechtenstein courts, these requirements must be judged according to the substantive law of the state of which the deceased was a citizen unless the deceased made a valid choice of some other law.

Pursuant to the Liechtenstein Creditors' Avoidance of Transfers Act, the following legal acts of the debtor may be contested by his creditors:

(a)all gratuitous disposals (and transactions equivalent to these) made, by the debtor within one year before execution was granted;

(b)legal acts entailing the obvious preference of a creditor and carried out by the debtor within one year before execution was granted;

(c)all legal acts carried out by the debtor with the intention (this intention being obvious to the other party at the time of the act) to damage his creditors or to favour individual creditors to the detriment of others (all this without regard to the time at which these acts were carried out).

However, not every creditor is entitled to avoidance but only to those who are in possession of a claim enforceable by prosecution (usually a final judgment), provided always that a claim against the debtor has not lead to the full satisfaction of the creditor or that at the time the claim is granted it is to be expected that it will not lead to full satisfaction.

The enforceability of foreign judgements is not straightforward and is not always successful. Liechtenstein has concluded treaties concerning the enforcement of foreign judgments only with the Republic of Austria and the Swiss Confederation. On the basis of these treaties, Austrian and Swiss judgments in civil matters (with certain exceptions) from these countries will be enforced in Liechtenstein.

Regardless of whether the debtor acted with or without the obvious intention of damaging his creditors, the creditors' right of avoidance is subject to a statute of limitations of five years after the voidable legal act took place. However, under certain closely defined circumstances, this period can be extended to a maximum of 10 years.

As always, it is necessary to examine the applicable law in the field of the avoidance of legal acts under the Creditors' Avoidance of Transfers Act. The question of whether and which legal acts can be contested is basically decided by the law of the debtor's residence or domicile; however, a legal act can only be contested if it is voidable not only pursuant to this law but also to that relevant for the acquisition procedure. If both relevant jurisdictions allow an avoidance of the legal act but differ concerning the requirements for avoidance or concerning time limits, the law that is more favourable to the debtor is to be applied. It is possible to include submission to judgments from foreign jurisdictions in contracts and possibly in the trust deed.

Recognition of trusts

LIE-50 Liechtenstein trust law provides that a trust shall be subject to the law of the country as determined in the trust deed. In default of such a determination the law of the country shall apply in which the trustee or the majority of the trustees have their usual residence or seat or —if this criterion cannot be applied (e.g. because the two trustees have their usual residence in different countries)—the law of the country in which the trust has its centre of business. Since April 1, 2006, the Principality of Liechtenstein is, like the United Kingdom, a state party to the Hague Convention of July 1, 1985 on the Law Applicable to Trusts and on their Recognition (details on http://www.hcch.net).

Miscellaneous

LIE-51 The trust deed of a Liechtenstein trust usually provides that the trustees shall have the power to move the trust and its forum of administration to another country. No government approval is necessary.

Trust enterprises

Basis

LIE-52 The trust enterprise ("Trust reg."; "Treuunternehmen" in German) is based on the "American business trust" (also known as "Massachusetts Trust"). It was codified in 1928 (art.932a, para.1-170).

Definition and legal characteristics

LIE-53

The essence of the trust enterprise is that assets are transferred from the settlor to the trustees in order that the trustees may operate a legally independent enterprise for the benefit of the beneficiaries. The special feature of the trust enterprise as compared with a regular trust, is that the trust enterprise may not only be organised without a legal personality (real business trust) but also as a trust enterprise with a separate legal personality (non-real business trust). The enterprise without legal personality has no practical significance in Liechtenstein legal practice; therefore, the following comments refer to the trust enterprise *with* legal personality (and without members). Unlike the trust, the trust enterprise is thus a legal entity.

Formation and existence

LIE-54 A trust enterprise may be formed by any physical person or legal entity, national or foreigner, without regard to residence or domicile. One single settlor is sufficient.

In order to obtain legal personality, the trust enterprise must be entered in the Public Register. The extract from the Public Register contains the same information as for other legal entities entered.

Capital

LIE-55 The minimum capital is CHF30,000 which must be fully paid up (in cash or in kind) at the time of formation.

Object

LIE-56 The comments concerning establishments (see para.21 *above*) also apply to trust enterprises.

Liability

LIE-57 Only the assets of the trust enterprise are available to pay the liabilities of the trust enterprise. There is no personal liability of the participants unless otherwise provided by statute or charter. In all cases in which the law provides for personal liability, this liability may be excluded from the articles.

Participants

LIE-58 The participants of the trust enterprise are:

(a)the settlor;

(b)the trustee;

(c)the beneficiaries.

Settlor

LIE-59 The settlor transfers part of his assets to the trust enterprise with legal personality and at the same time stipulates in the articles how these assets are to be administered by the trustees.

Trustees

LIE-60 The trustees are responsible for the conduct of all business and the representation of the trust enterprise to third parties. They are authorised to carry out all business transactions that the object of the trust enterprise may in any way require. There is no statutory minimum number of trustees.

Beneficiaries

LIE-61 The beneficiaries of the trust enterprise are those persons or legal entities who, pursuant to the articles and by-laws, shall derive some present or future beneficial interest from the trust enterprise (e.g. a share in the income or capital of the trust property or both). The settlor himself may be a beneficiary or even the sole beneficiary.

Bookkeeping and auditor

LIE-62 Whether the trust enterprise is obliged to keep books, employ an auditor and file an audited balance sheet with the Tax Administration or whether it only has to file a statement concerning its business activities and a statement of assets and liabilities depends on the business activities and the object of the trust enterprise.

Miscellaneous

LIE-63 A trust enterprise usually has a legal representative. Transferring the seat of a trust enterprise abroad without prior dissolution in Liechtenstein is also permitted subject to the prior approval of the Liechtenstein Public Registry.

Holding and domiciliary companies

Definition and legal characteristics

LIE-64 A domiciliary company (Sitzunternehmen) is an enterprise that merely has its domicile, with or without offices in Liechtenstein, without engaging in any commercial activities in Liechtenstein. A holding company is an enterprise whose object is the administration of assets or the control or the financing of foreign enterprises or the holding of participations in such enterprises.

Special provisions

LIE-65 With regard to domiciliary enterprises and holding companies, there are some special provisions in the PGR, the following of which should be mentioned, amongst others:

(a)the name of the enterprise may be entered in the Public Register exclusively in a foreign language without German translation;

(b)balance sheets may be drawn up exclusively in a foreign currency;

(c)notification of a general meeting, the dissolution of the company, an entry in the Public Register, etc. to members or third parties is usually given by announcement on http://www.gboera.llv.li rather than by publication in the press;

(d)companies limited by shares with a capital of more than CHF1 million may have a board of directors with fewer than three members;

(e)a domiciliary enterprise with a legal personality must have at least one member of the board of directors, foundation council or board of trustees who is a Liechtenstein trustee, works in a Liechtenstein trust company or holds a special permit pursuant to art.180a PGR.

End of Document

LIE-66 Ownership and possession

European Cross-Border Estate Planning

Other European States

Liechtenstein

Liechtenstein

Part I General Law

Forms of ownership

Ownership and possession

LIE-66 The Liechtenstein law relating to land and chattels is codified in the Liechtenstein Property Law (Sachenrecht (SR)) of December 31, 1922. The Property Law is more or less a blueprint of the relevant provisions in the Swiss Civil Code. Possession (Besitz) see arts 498–520 SR) is defined as a person's factual power, protected by the legal system, over property. By contrast, ownership (Eigentum; see arts 20–197 SR) is a comprehensive right of control over property (absolute right) and allows the owner to dispose of the property in any way he desires within the limits of applicable laws and to protect it against unlawful encroachment by third parties.

Kinds of ownership

Sole ownership

LIE-67 In sole ownership, the right of ownership belongs to a single physical person or legal entity.

Joint ownership

LIE-68 There are two legal ways in which a number of persons or legal entities may own property. In a case of co-ownership (Miteigentum), each co-owner has the rights and duties of an owner in respect of his share. By contrast, the right of ownership is exercised together in case of joint ownership (Gesamteigentum), and the property in common is not divided into shares.

Ownership concerning trust assets

LIE-69 In a trust, the trustee obtains the sole and absolute right (title in rem) to the trust property. However, the trustee is obliged to make use of this property only in a certain manner, i.e. in accordance with the provisions of the trust deed for the benefit of the beneficiaries.

The beneficiaries of a trust have no right of ownership concerning the trust property but only a right against the trustee (right in personam) against the trustee that the trust property be held, administered and used in accordance with the provisions of the trust deed for the benefit of the beneficiary to the extent of the beneficial interest. However, this obligatory right of the beneficiary is somewhat strengthened (provided with in rem quality) by the fact that the beneficiary has a right to follow the trust property in case of breach of trust, and that the trust property is not available to the trustee's creditors in execution and bankruptcy.

End of Document

LIE-70 Definition

European Cross-Border Estate Planning

Other European States

Liechtenstein

Liechtenstein

Part I General Law

Forms of ownership

Law of matrimonial property

Definition

LIE-70 The matrimonial property law, codified in the General Civil Code (Allgemeines bürgerliches Gesetzbuch (ABGB)) of June 1, 1811 and the Matrimonial Law (Ehegesetz (EheG)) of December 13, 1973, regulates the relationship regarding property between spouses/civil partners during marriage and after dissolution of the marriage. Civil partnerships have been permitted in Liechtenstein since September 1, 2011.

Separation of property

LIE-71 The statutory matrimonial regime of Liechtenstein law is that of the separation of property. This property regime stipulates that each marriage partner keeps the right of ownership to the assets brought into the marriage by him or her as well as the ownership of all assets acquired by him or her during marriage. It applies in an unlimited way only as long as the marriage is not dissolved, or when it is dissolved by death. For if the marriage is annulled, or the couple are separated or divorced, Liechtenstein law provides that the assets acquired by each spouse or civil partners (with a few exceptions, such as gifts and inheritances) have to be divided between the spouses under the principles of equity. One person may be entitled to financial support by the other.

In the event of the death of one spouse or civil partner, the other may retain half of all the property in common use.

Marriage Contracts

LIE-72 In a prenuptial agreement, the spouses or civil partners are free to adopt a property regime differing from the statutory one by concluding a written agreement with both signatures certified, usually by the court. They may, for example, agree on community of assets (of which again there are many variations). It is also possible to include binding provisions for the distribution of assets in case of a divorce. However, the scope of these provisions is limited and must be validated by the divorce judge before issuing the divorce decree.

End of Document

LIE-73 Definition

European Cross-Border Estate Planning

Other European States

Liechtenstein

Liechtenstein

Part I General Law

Lifetime gifts

Definition

LIE-73 Pursuant to Liechtenstein law a donation is a consensual contract by which property is placed under the control of the donee, the donor having the intention to make a gift (see arts 938–956 ABGB). The donor acts without consideration and voluntarily.

End of Document

LIE-74 Formalities

European Cross-Border Estate Planning

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Lifetime gifts

Formalities

LIE-74 If the contract of donation only contains the donor's promise to give something to the donee without consideration, the donee may only file an action based on this agreement if it was made in writing. If the gift is delivered contemporaneously, the contract of donation is valid without any formalities.

When donating real estate, the contract of donation has to be entered in the Land Register (http://www.gboera.llv.li). There are certain limitations of land donations provided by the real estate transfer legislation.

End of Document

LIE-75 Revocation

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Part I General Law

Lifetime gifts

Revocation

LIE-75 Basically, contracts of donation are irrevocable. They can only be revoked if the requirements stipulated in the law are met (e.g. because of gross ingratitude of the donee). Furthermore, in cases of violation of the forced share in an inheritance, a damaged forced heir is entitled under certain circumstances to demand that the donee pay the difference between the amount donated and the compulsory portion, otherwise enforcement on the assets donated will be granted.

End of Document

LIE-76 Proportion of the donation

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Lifetime gifts

Proportion of the donation

LIE-76 An owner may give away everything he presently owns. As regards future property, however, the law provides that no more than half may be given away.

End of Document

LIE-77 Formation of foundations and trusts

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Part I General Law

Lifetime gifts

Formation of foundations and trusts

LIE-77 Legally, the endowment of property carried out by the founder when establishing a foundation is not a donation; however, the law provides that such endowments can be contested by creditors and forced heirs just like a donation. In contrast to this, the transfer of further assets after the foundation has been established (additional endowment) is legally regarded as a donation.

Placing assets under the control of a trustee is a transaction sui generis and therefore not to be legally regarded as a donation either.

As opposed to the position under Anglo-American law, the settlor, in case of an inter vivos trust, is not bound by the mere statement that the trust is being established. The settlor's obligations only arise when the duties of trusteeship are accepted by the trustee. Once the trustee has accepted his task, he may demand that the settlor transfer the trust property. It is of no significance whether the trust is established with or without consideration.

End of Document

LIE-78 Law of succession

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Estates of deceased individuals

Law of succession

LIE-78 Liechtenstein succession law is codified in arts 531–824 of the General Civil Code. These provisions are almost identical with arts 531–824 of the Austrian General Civil Code. Succession law contains rules regulating the devolution of the estate of a deceased person (testator) to his successors (heirs) in the sense of universal succession. It determines a person's right to receive something from the estate of a deceased person (right to an inheritance).

The Liechtenstein law of succession recognises three kinds of rights to an inheritance:

(a)those resulting from a last will of the deceased;

(b)those derived from a contract of inheritance; and finally

(c)those based on the law.

Whether Liechtenstein law will apply or not will depend on the nationality of the decedent. Where the decedent is not a Liechtenstein national and has not chosen the inheritance law of Liechtenstein, then his nationality will determine the applicable law.

End of Document

LIE-79 Definition

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Estates of deceased individuals

Last will

Definition

LIE-79 A last will is defined as a disposition from the testator on who shall receive his estate. This direction is unilateral, revocable at any time, does not require receipt and must meet certain formal requirements.

Testament/codicil

LIE-80 If the last will appoints one or more persons heirs of the whole estate or a quota thereof (appointment as an heir), it is called a testament. If no appointment of an heir is contained in the last will but just gifts to third persons or other directions, it is called a codicil.

While an heir (Erbe) is the universal successor of the deceased, the legatee (Vermächtnisnehmer/Legatar) only possesses a claim in personam against the heir.

Testament and codicil are essentially subject to the same rules.

Form

LIE-81

The testator may make a will in court or out of court, orally or in writing. The form of last will most frequently found is the out-of-court written testament. A person who wants to testate in this form must either write the will entirely by hand and sign it (holographic testament) or personally sign the will not written by himself and designate it as his last will in presence of three capable witnesses. The witnesses also have to sign the testament, each adding a reference to their capacity as witness.

Liberty to testate and revoke

LIE-82 The testator enjoys liberty to testate, that means he can at any time modify the rules of intestate succession. This, however, does not affect the forced heirs' right to a compulsory portion (forced heirship), which cannot be cancelled or curtailed by a last will. The testator may revoke his will at any time. This right of revocation cannot be excluded since it would violate the liberty to testate. The revocation can be express (by way of a last will), tacit (by doing something with the document, e.g. tearing it up) or by making a new last will.

End of Document

LIE-83 Intestate succession

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Estates of deceased individuals

Intestate succession

LIE-83 According to the statutory order of succession, which is applied if the deceased has not disposed of his whole estate by means of a last will or contract of inheritance, the deceased's spouse and his relatives will inherit in the order provided by the law.

First of all, the descendants of the deceased shall have the right to inherit ("first line"). This excludes the second line, i.e. the deceased's parents and their descendants, who on their part exclude the third line (the grandparents of the deceased and their descendants), and these exclude the fourth line (the great-grandparents of the deceased). Within the individual lines division is per stirpes: If the (unmarried) deceased has two children and one of them predeceased him, all children of the predeceased together inherit one-half of the estate; the other half goes to the surviving child.

If descendants of the deceased exist, the spouse receives one-third of the estate. This share is increased to two-thirds if there are only parents and their descendants or only grandparents of the deceased as co-heirs. If pursuant to intestate succession rules, descendants of the deceased's grandparents or his great grandparents are co-heirs of the spouse, the spouse also gets their legal share.

End of Document

LIE-84 Contract of inheritance

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Estates of deceased individuals

Contract of inheritance

LIE-84 A contract of inheritance differs from the testament in that a binding contractual obligation is entered into. By concluding the contract of inheritance, one party promises the future estate or a part of it, and the other party accepts this promise. Contracts of inheritance must be legalised and are limited by Forced Heirship Rules. They are very uncommon in Liechtenstein.

End of Document

LIE-85 Character of the right to compulsory portion

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Right to a compulsory portion (forced heirship)

Character of the right to compulsory portion

LIE-85 In a case where the decedents nationality is not an issue then the law of inheritance in Liechtenstein will apply. The Forced Heirship Rules ("Pflichtteilsrecht") serve to limit the private discretion of the testator in transactions mortis causa in this juridiction.

Right to compulsory portion and forced heirs

LIE-86 The right to a compulsory portion is the right of the forced heirs to a certain share of the estate. The persons entitled to a compulsory portion are the descendants and the spouse or civil partner of the deceased. If such do not exist, the deceased's parents are forced heirs, too. Other persons such as the deceased's brothers and sisters are never forced heirs.

Claim to compulsory portion

LIE-87 The claim to a compulsory portion arises at the time of the deceased's death if the deceased has failed to leave to the forced heir the share provided by the law (compulsory share). The same applies if only part of the compulsory share has been left to the forced heir, or the compulsory share left to him is subject to conditions, time limits or other limitations.

This claim to a compulsory share is only a claim for payment of the corresponding value or difference in cash. The forced heir therefore acquires the status of a creditor having an in personam claim against the estate or, after its devolution to the heirs, against the latter. Another legal consequence related to the character of the compulsory share is that the transaction mortis causa violating the compulsory share (last will/contract of inheritance) remains valid.

Compulsory portion

LIE-88 The compulsory portion of the spouse or civil partner and the descendants is one-half, that of the deceased's parents is one-third of their respective statutory share (see above).

Disinheritance

LIE-89 Persons entitled to a compulsory portion may only be disinherited for the reasons stipulated by law, namely if the forced heir has failed to help the testator when he was needy, if he has been sentenced to more than 20 years' imprisonment for a criminal offence committed with intent, or if his lifestyle continuously and blatantly violates public morals. It is not entirely clear how the first and third conditions are to be determined, or on what basis the courts would make a determination.

Calculation of the compulsory portion

LIE-90 When calculating the compulsory portion it is not only all movable and immovable goods belonging to the estate one has to consider. On request of a child, spouse or civil partner entitled to a compulsory portion (but not a parent of the deceased entitled to a compulsory portion). All gifts made by the deceased during his lifetime have to be taken into account, too.

It should be noted in this context that not all lifetime gifts can be added to the value of the estate. For example, when calculating the compulsory portion of a child, gifts made at a time when the deceased had no children entitled to a compulsory portion are not considered. However a person entitled to a compulsory portion must tolerate the fact that gifts received by himself from the deceased are taken into account. Gifts which were given more than two years before the deceased's demise to a person other than a forced heir are not considered, either.

End of Document

LIE-91 Devolution of the estate

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Estates of deceased individuals

Devolution of the estate

LIE-91 In the course of probate proceedings (in which the Princely Court of Justice has jurisdiction), the heir has to declare whether and to what extent he is willing to enter upon the inheritance and on which title his right to the inheritance is based (i.e. intestate succession, last will or contract of inheritance).

Since the heir, being a universal successor, is basically liable for all debts of the deceased, he will usually make use of the benefit of a conditional inheritance declaration, which limits his liability for the deceased's debts to the value he receives from the estate.

Devolution

LIE-92 The devolution is the order of the probate court by which the estate is handed over to the heir and the probate proceedings are closed. This devolution means that the universal succession of the heir begins. The heir now has full power over the estate's assets and becomes their legal owner.

Suspended estate

LIE-93 Until the devolution of the estate, the estate has a legal fate separate from that of the heirs. During this time it is referred to as a "suspended estate" (hereditas iacens or ruhender Nachlass), which possesses legal personality.

Estate administration

LIE-94 Before the devolution, an heir may request that the court entrust him with the administration of the estate. If the heir is able to prove his right to the inheritance sufficiently, then the court has to comply with this request.

If no heir exercises his right to administer the estate or if the prospective heirs do not concur, the court has to appoint an administrator. The testator can also designate an executor in his last will.

The Principality of Liechtenstein has not ratified the International Convention on Administration of Estates.

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LIE-95 Introduction

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Introduction

LIE-95 Liechtenstein conflict of laws is codified in the Private International Law Act ("IPRG") of September 19, 1996. The application of Liechtenstein private international law to a deceased's estate will primarily depend on whether or not it is a case for Liechtenstein jurisdiction (art.29, IPRG). Yet a foreign court having jurisdiction in a given case, in applying its own private international law, may refer the matter to Liechtenstein law, including Liechtenstein private international law. The point is of practical interest because some foreign private international law systems follow the rule of outright referral as opposed to mere substantive-norm referral. Liechtenstein private international law, however, basically follows the rule of substantive-norm referral. This means that a referral by Liechtenstein private international law to a foreign law is a referral to the foreign substantive law, while the foreign conflict of law rules will only be applied to the extent that they contain a referral back to Liechtenstein law.

The jurisdiction of Liechtenstein courts may mainly arise in two circumstances: in handling the deceased's estate or parts thereof (probate jurisdiction) and in deciding actions, notably claims to statutory forced heirship, affecting assets located in Liechtenstein for example in a Liechtenstein foundation or trust.

In matters of succession, the rules governing Liechtenstein jurisdiction are of special importance inasmuch as they decide which law of succession is to apply. Whenever an estate is submitted to a Liechtenstein court for probate proceedings, Liechtenstein succession law is applied, unless the deceased has made a valid choice of some other law.

Probate jurisdiction

LIE-96 The jurisdiction of Liechtenstein courts to handle estates essentially depends on the domicile and location of the assets. Liechtenstein courts will establish jurisdiction over an estate and institute probate proceedings if the deceased, whether a Liechtenstein or foreign national, was domiciled in Liechtenstein prior to his death. If not so domiciled, Liechtenstein jurisdiction depends on whether the deceased, again regardless of his nationality, has left behind assets located in Liechtenstein. But even then Liechtenstein jurisdiction will not take priority insofar as probate proceedings and the administration of the assets are dealt with by a competent court of jurisdiction outside Liechtenstein. Only if no other authority assumes responsibility will Liechtenstein courts institute probate proceedings.

However, Liechtenstein courts will invariably establish probate jurisdiction over real estate located in Liechtenstein. In any case, the scope of Liechtenstein probate proceedings will de facto be confined to those parts of the estate over which the courts can exercise control.

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LIE-97 Matrimonial property law

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Property belonging to spouses or civil partners

Matrimonial property law

LIE-97

In matters of matrimonial property law, Liechtenstein private international law permits the spouses or civil partners to choose a law, although with some restrictions. The choice of law must be made in writing and the spouses/civil partners may only choose a law with which they have a close connection. Thus, they may choose the law of their first (future) usual matrimonial residence, or the laws of their usual matrimonial residence at the time of making the choice of law, or the laws of the home country of either spouse or civil partner. “Usual residence” in this context is expressly defined by Liechtenstein private international law itself. Pursuant to art.9a IPRG, an individual has his or her usual residence at the place where he has been living for a substantial period, even if intended from the start to be of limited duration.

In default of a choice of law, the spouses or civil partners will primarily be subject to the matrimonial property law of the country in which they had their usual residence at the time of marriage. In default of such a usual matrimonial residence at that time, the criterion of closest connection will apply. However, if the marriage, recognised as validly contracted under Liechtenstein law, is not recognised under foreign law as determined according to the above-mentioned rules, the matrimonial property law of Liechtenstein will apply. This may be the case for civil partnerships which are not yet recognised in every jurisdiction.

Under Liechtenstein private international law the location of assets either in Liechtenstein or abroad is largely irrelevant in determining the law to be applied. The same holds for the deceased’s nationality or domicile, which by themselves do not constitute connecting factors

for the purpose of determining which matrimonial property regime to apply. Nationality is only indirectly relevant, since one of the factors limiting the range for a possible choice of law to be made by the spouses under matrimonial property law.

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LIE-98 Forced heirship

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Forced heirship

LIE-98 By private international law, the subsistence and extent of statutory forced shares in an estate is a matter of succession on death and is therefore governed by the law of succession. According to art.29 IPRG, the law of succession to be applied depends on the nationality of the deceased, in that the law of the deceased's home country becomes operative at his death (status law). If the deceased held several nationalities, the home country law to which he had established the strongest ties will apply. However, in the case of a Liechtenstein dual citizen, Liechtenstein law will always prevail. The deceased's status law may be overruled in two ways:

(a)by a valid choice of law;

(b)by Liechtenstein law in case of Liechtenstein probate proceedings being established (Liechtenstein probate jurisdiction regime). In this case Liechtenstein succession law will be applicable regarding all estate matters provided no valid choice of law has been made.

Choice of law

LIE-99 A choice of law in respect of succession will not be open to a Liechtenstein national unless his domicile was abroad. In such a case, a person holding several nationalities may choose one of the several home laws or the law of the country in which he had his last usual residence. For foreign nationals, the choices remain the same, but regardless of domicile. Thus, a foreigner may choose the law of any country whose nationality he holds or in which he had his last usual residence. Thus an English citizen domiciled in Liechtenstein and subject to Liechtenstein probate proceedings may validly choose English law to govern his estate. The Liechtenstein

probate judge then has to apply English law. English law does not recognise forced heirship claims, which is why the testator, even though domiciled in Liechtenstein, does not have to consider his descendants.

The choice of law may be made in a contract of succession or in a last will. It must meet the formality requirements of at least one of the following law systems:

(a)the deceased's home law at the time of making the choice or at his time of death;

(b)the law of his usual residence at the time of making the choice of law or at his death;

(c)Liechtenstein law if probate proceedings are to be held in a Liechtenstein court (see para.96 *above*, as to the formalities of a Liechtenstein will see para.81 *above*).

Deceased having no Liechtenstein domicile or usual residence

LIE-100 If the deceased was not domiciled in, or a resident of, Liechtenstein prior to his death, then Liechtenstein probate jurisdiction will not necessarily be established and, thus, the Liechtenstein probate jurisdiction regime will not be applied to the estate as discussed above. Absent such regime the general rules will apply deferring matters of statutory forced shares to the deceased's status law unless a valid choice of law points to another law. Where the deceased's assets include Liechtenstein real estate, such real estate necessarily comes within the jurisdiction of the Liechtenstein probate court with the effect of Liechtenstein succession law being applied, again unless the deceased has validly chosen some other law, e.g. his home law. In the case of movable assets located in Liechtenstein forming part of the estate, Liechtenstein probate jurisdiction may also be established, subject to the same consequences and exceptions.

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LIE-101 Liechtenstein nationals

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Immovable property

Located in Liechtenstein

Liechtenstein nationals

LIE-101 If the deceased has not made any valid choice of law, the Liechtenstein-located real estate of Liechtenstein nationals will be subject to the Liechtenstein law governing succession and statutory forced heirship. Both criteria within the applicable conflict of law rules, being the deceased's status law and the Liechtenstein probate jurisdiction regime, refer the matter to Liechtenstein law.

Foreign nationals

LIE-102 It is open to foreigners to make a choice of law within the limits mentioned as discussed above. If they do not, the Liechtenstein probate court will proceed on the basis of Liechtenstein succession law. The deceased's domicile or usual residence will only be relevant as to the range of options for a choice of law.

Located abroad

LIE-103

Real estate located abroad will never be probated by Liechtenstein courts, regardless of whether the deceased was a Liechtenstein national or a foreigner. However, in a dispute over statutory forced heirship before a Liechtenstein court, the fate of the foreign-located real estate may well assume importance. On the one side, forced heirship claims are to be assessed in taking account of the value of the entire estate, and will therefore include the foreign real estate. On the other side, the question of succession to that real estate could have to be considered as a preliminary question in the Liechtenstein proceedings.

Liechtenstein nationals

LIE-104 According to Liechtenstein conflict of law rules, these matters will be decided under Liechtenstein law, unless the deceased validly chose to make another law applicable. The deceased's usual residence is merely relevant as a criterion for the admissibility of his choice of law. (See para.99 above.) However, since foreign-located real estate will be subject to probate proceedings in the situs state, the laws (including conflict of laws rules) of that state and not the Liechtenstein provisions will be applicable.

Foreign nationals

LIE-105 If matters of succession arise in a Liechtenstein court in connection with foreign-located real estate either the deceased's home country law will apply or the law referred to by a valid choice of law.

Conversion of real estate into movable assets

LIE-106 Under Liechtenstein private international law, contribution of real estate to a company amounts to a conversion into movable assets. Interests held in companies are treated as movable assets, even where the company's assets consist wholly or partly of real estate. However, the advantages of such a transaction are minimal.

Liechtenstein real estate

LIE-107 Liechtenstein real estate is, as a rule, handled by Liechtenstein probate courts which will apply Liechtenstein succession law. This is the case irrespective of whether the deceased was a Liechtenstein national or a foreigner. Yet foreigners owning real estate in Liechtenstein can avoid the application of Liechtenstein law by making a valid choice of law in their will pointing to another country. Furthermore, Liechtenstein's restrictive law on real estate transfer

must be noted. Under this legislation the contribution of real estate to companies especially formed for the purpose is highly regulated and in many instances prohibited.

Foreign real estate

LIE-108 Since Liechtenstein probate jurisdiction does not cover the foreign-located real estate of Liechtenstein nationals or of foreigners, conversion of foreign real estate into movable assets by contributing it to a company will be expedient only if it is intended to establish Liechtenstein probate jurisdiction and thus make Liechtenstein law governing succession and forced heirship applicable. Liechtenstein probate jurisdiction supervising the devolution of ownership of movable assets is conditional either on the deceased having been domiciled in Liechtenstein or at least on the Liechtenstein location of his (or some of his) movable assets. Lacking domicile, Liechtenstein courts will, as a rule, relinquish the matter to any competent court of jurisdiction outside Liechtenstein. Only if no foreign court establishes jurisdiction, will probate proceedings take place in Liechtenstein. In order to place such converted property in Liechtenstein and, hence, preserve the chance for Liechtenstein probate proceedings, the company to which real estate has been contributed for the purpose of converting it into movable assets must be domiciled in Liechtenstein. The interest held therein should where possible be held in Liechtenstein.

Trusts

LIE-109 Under Liechtenstein law, assets transferred to a trust during the deceased's lifetime are not exempt from claims by forced heirs. As a rule, conflict of law rules as to succession law on the one hand and trust law on the other tend to focus on different criteria. It is the international law of succession (as described before) which decides estate law and matters of forced heirship, while the law under which the trust was created decides what trust law to apply. Thus, where private international law refers the estate to a law system other than that under which the trust was created, any given rule of trust law allowing the non-observance of forced heirship claims would not be effective.

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LIE-110 Liechtenstein nationals

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Movable assets

Located in Liechtenstein

Liechtenstein nationals

LIE-110 Foreign-located movable assets of the estate of Liechtenstein nationals are subject to the general rules of private international law. If Liechtenstein courts get involved at all, the matter of succession will be decided either under Liechtenstein law (deceased's status law) or under the law validly chosen by the deceased.

Foreign nationals

LIE-111 Movable assets of foreign nationals will be subject to Liechtenstein probate proceedings in case of the deceased having been domiciled in Liechtenstein prior to death or in case of the presence of assets in Liechtenstein. If Liechtenstein probate jurisdiction does not apply, the matters of succession law and forced heirship—which might become relevant to a Liechtenstein court despite the lack of probate jurisdiction in case of a preliminary question—will be decided under the deceased's home country law unless the deceased had made another choice of law.

Located abroad

Liechtenstein nationals

LIE-112 The succession to foreign-located movable assets of Liechtenstein nationals will be decided under Liechtenstein law, unless the deceased validly opted for some other law system.

Foreign nationals

LIE-113 Such cases are subject to the deceased's home country law, unless overruled by a valid choice of law whether Liechtenstein or not. Where Liechtenstein probate jurisdiction is established, because of the Liechtenstein domicile of the deceased or the location of other assets in Liechtenstein, Liechtenstein succession law and forced heirship rules might apply.

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LIE-125 General

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Part II Taxation

Taxes

Dr Herbert Oberhuber[1]

General

LIE-125 The Steuergesetz (Law of State and Municipal Taxes) currently applicable in Liechtenstein dates back to 1961. This tax law is based on the Steuergesetz of 1923 (general property tax with supplementary gains tax), and was revised in 2010. The rules regarding the taxation of income and assets were changed at that time.

The attempt to replace the 1961 law by a new tax law better suited to meet the principle of equal distribution of taxes failed in 1990, when the new Law of State and Municipal Taxes already passed in Parliament was not approved by the Liechtenstein population in a referendum.

With effect from 1 January 1995, the Principality of Liechtenstein, simultaneously with Switzerland, introduced value added tax (VAT). Value added tax, which is levied in place of the previous turnover tax on goods, now also applies to services and is not limited to the turnover of goods. While the turnover tax on goods was levied on the basis of a Swiss Bundesrat Resolution, which Resolution was also applicable to Liechtenstein due to the customs treaty with Switzerland, VAT is levied on the basis of a Liechtenstein Act passed by the Liechtenstein legislature. However, to avoid competitive inequality in the same economic area, the Principality of Liechtenstein has concluded a treaty with Switzerland in which it agrees that Liechtenstein will adopt the Swiss provisions of substantive law concerning VAT. This obligation also applies to any future amendments to the Swiss rules on VAT, Liechtenstein being entitled to represent its interests in consultation proceedings to be carried out prior to any modification. Another new aspect is that VAT is levied and administered by the Principality of Liechtenstein autonomously, while these activities were carried out by the Swiss authorities during the time of the turnover tax on goods.

Natural persons are considered tax resident if you spend six months or more in Liechtenstein and are subject to unlimited tax liability on worldwide wealth and income. Tax is limited where the individual spends less than six months of the year in Liechtenstein.

Footnotes

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LIE-126 Kinds of taxes

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Taxes

Kinds of taxes

LIE-126 Liechtenstein tax legislation provides for the following kinds of tax:

(a)property tax;

(b)capital gains tax;

(c)annuity tax;

(d)capital gains tax on real estate;

(e)capital and profits tax;

(f)special company taxes; largely abolished in 2011

(g)coupon tax; abolished January 1, 2011

(h)estate, inheritance, and gift tax; now abolished

(i)motor vehicle tax;

(j)formation and revenue stamp duties;

(k)value added tax (VAT).

In addition to these state taxes there are also municipal taxes, namely the municipal surcharge on state property and gains taxes, the ticket tax, the dog tax and various contributions.

Furthermore, there are the taxes and duties levied in Liechtenstein due to the customs Treaty with Switzerland, these being:

(a)duties;

(b)customs duties.

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LIE-127 Taxes chargeable on individuals

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Taxes chargeable on individuals

LIE-127 Physical persons are subject to the following taxes during their lifetimes and in the event of death:

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LIE-128 Subject of taxation

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Part II Taxation

Taxes

Property and gains tax

Subject of taxation

LIE-128 All movable property and real estate of the taxable person situated in Liechtenstein is subject to property tax.

The subject of gains tax is all income consisting of money or monetary value unless exempted by the law. Therefore, realised capital gains on invested assets are also subject to gains tax.

Income from assets for which the taxable person has already paid property tax, and income from own enterprises located abroad are exempt from gains tax.

Taxable person

LIE-129 Natural persons are taxable unlimitedly if they:

(a)are domiciled in Liechtenstein; or

(b)are resident in Liechtenstein for pursuing gainful employment; or

(c)have had their abode in Liechtenstein for a certain continuous period of time (six weeks where the person has lived in a rented apartment or three months if it is not a rented apartment), without gainful employment.

Natural persons not meeting the requirements for unlimited taxability are subject to property and gains tax as regards real estate located in Liechtenstein and permanent establishments located in Liechtenstein. However, the profits such persons receive as the owners, members, participants or partners of an enterprise taxable in Liechtenstein are not subject to taxation.

Tax rate

LIE-130 The tax rate is determined every year by the Liechtenstein Parliament. The rate is progressive ranging from 0% to 0.70%.

Should Parliament want to increase these rates by more than one and a half times the tax rates of the previous year, a referendum must be held.

The tax liabilities (of property and gains tax) calculated on the basis of these rates are added and then increased by a surcharge (currently between 5 and 425 per cent) using a progression table. A municipal surcharge of 250 per cent maximum is raised on the resulting state tax (the current municipal surcharge is 200 per cent in almost all municipalities).

Based on a municipal surcharge of 200 per cent, the following maximum rates for these two kinds of taxes can be calculated:

property tax	0.8505 per cent
gains tax	17.1 per cent

Tax assessment and maturity

LIE-131 Every year, a taxable person has to submit a tax declaration on an official form until the date set by the Tax Administration (which date must not be earlier than 31 March of each year). Persons subject to limited taxation are exempt from this obligation, provided they pay property tax at double rates and without deductions.

Property and gains tax has to be paid for the whole year within 30 days of service of the tax assessment note or the tax bill.

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LIE-132 Subject of taxation

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Taxes

Annuity tax

Subject of taxation

LIE-132 This tax is levied in place of the property and gains tax. Therefore, the subject of annuity tax is the property subject to property and gains tax, with the exception of real estate located in Liechtenstein (for which property tax has still to be paid).

Taxable person

LIE-133 This tax has to be paid by physical persons with domicile or residence in Liechtenstein, provided they meet the requirements stipulated by the law for applicability of the annuity tax, these being that:

(a)no gainful employment is pursued in Liechtenstein;

(b)the taxable person is able to make a living from the revenues of his assets or from revenues coming to him from abroad;

(c)the application to be subjected to annuity tax is granted by the Tax Administration (in current practice, this is done only as an exception).

Tax rate

LIE-134 The rate of annuity tax corresponds to 15 per cent of the total expenses of the taxable person; these expenses must be at least five times the apartment rent or the renting value of the apartment, or three times the board and lodging price for the family. No progression or municipal surcharges are levied on the resulting amount of tax.

This tax is currently fixed by the Tax Administration without regard to the basis of assessment stipulated by the law.

Tax assessment and maturity

LIE-135 There is no tax assessment, since in all cases of annuity tax there is an agreement with the Tax Administration.

Annuity tax is payable on service of the tax bill and has to be paid within 30 days.

End of Document

LIE-136 Subject of taxation

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Capital gains tax on real estate

Subject of taxation

LIE-136 The subject of the capital gains tax on real estate is the capital gain made on the conveyance (including foreclosure sale and expropriation) of real estate located in Liechtenstein.

Capital gains of real estate is defined as the amount by which the proceeds exceed the initial costs (official estimated tax value or actual costs, if higher, plus value-increasing expenditures), or in the case of an exchange, the difference between the market values of the real estate exchanged.

Taxable person

LIE-137 The taxable person is the transferor of the real estate.

Tax rate

LIE-138 The tax rate to be applied is the actual gains tax rate. It is charged at a progressive rate between 0% and 0.7%.

If the transferor has been:

(a)the owner of the real estate for less than three years, the double tax rate is applied;

(b)the owner of the real estate for three to five years, the tax rate is increased by two-thirds;

(c)the owner of the real estate for five to ten years, the tax rate is increased by one-third;

d)the owner of the real estate for ten or more years, the simple tax rate is applied.

In cases of foreclosure, sale and expropriation, as well as in all cases where the state of Liechtenstein or a Liechtenstein municipality acquire land for certain purposes listed in the law, only the simple tax rate applies.

The tax amount calculated using the applicable tax rate is increased by surcharges (currently between 5 and 425 per cent) using a progression table, and a further surcharge of 200 per cent is levied on the tax calculated in this way.

Tax assessment and maturity

LIE-139 The taxable person who has made a capital gain on real estate must declare this to the Tax Administration within 30 days using an official form. The Tax Administration then fixes the amount of tax to be paid, which amount is payable on receipt of the tax assessment note.

End of Document

LIE-140 Estate, inheritance and gift tax

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Estate, inheritance and gift tax

LIE-140 There are no estate, inheritance or gift taxes in Liechtenstein (Source Deloitte, Liechtenstein Highlights 2016 and Ospelt & Partner Attorneys at Law Ltd Private Client Briefing 2016).

End of Document

LIE-143A Value added tax

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Value added tax

LIE-143A By an Act dated 24 November 1994, LGB1 1994/84, the value added tax (VAT) rate of 7.6 per cent, was introduced in the Principality of Liechtenstein as of 1 January 1995. It now stands generally at 8%. There is no requirement to register for VAT for business with turnover of less than CHF100,000. These rates were last increased on January 1, 2011 in line with rises in Swiss VAT rates with which the Liechtenstein authorities are obliged to be in line.

Subject to taxation

LIE-143B Value added tax is levied on:

(a)supply of goods; and services;

(b)items for personal use;

(c)import of services.

The import of goods is also subject to taxation. Goods can be supplied by:

(a)sale of goods;

(b)supply of goods that have been subject to processing by a third party;

(c)delivery/letting of objects for enjoyment or for use on the basis of a rent or leasing agreement.

The term *goods* includes movable and immovable property as well as electricity, gas, heat, cold, pressure, steam and similar. However, the assignment and creation of rights in rem to real property are exempted from VAT.

"Service" is any activity that is not considered to be a supply of goods. The transfer of intangible assets and rights is regarded as a service. If services are imported, the domestic recipient must pay tax on them provided that he uses or exploits them within the country.

A number of activities are exempt from VAT. These are mainly activities in the fields of health, education, culture, insurance, the administration of investment funds, the permanent letting and leasing of real property, and turnover in the field of money and capital transactions (with the exception of asset management and collection business).

In addition to these, the law also provides for activities that are zero rated. Although such activities are zero rated, a tax credit may be claimed in respect of the amount of VAT already paid on all goods and services required in order to effect them. These zero-rated activities include in particular the export of goods and services.

Taxable person

LIE-143C Anyone who, as a self-employed person, performs professional or trading activities connected with the object of earning income is taxable, even if there is no intention to make a profit (*entrepreneur*), provided that the domestic deliveries, services and personal use of that person exceed the total amount of CHF100,000 per year ("domestic" within the meaning of the Value Added Tax Act refers not only to the territory of the Principality of Liechtenstein, but also to that of the Swiss Confederation).

An entrepreneur or a private person is taxable as regards the import of services used or exploited within the country provided that these services exceed the amount of CHF 10,000 per year.

Among others, the following persons are not liable to pay VAT:

(a)Entrepreneurs with an annual turnover of up to CHF 250,000, provided that the tax payable after the deduction of the tax credits regularly does not exceed CHF 4,000 per year.

(b)Holding companies and domiciliary enterprises pursuant to Arts 83 and 84 Steuergesetz, as well as trusts pursuant to Arts 897 et seq PGR, except for their taxable domestic turnover.

With certain preconditions, there is also—even for entrepreneurs, not liable to VAT—the option of voluntarily subjecting themselves to taxation and thereby qualifying for tax credits.

There are changes to the registration threshold proposed in Switzerland which were supposed to take effect at the end of 2015. They are still outstanding but once they come into force all foreign traders will have to register for VAT and the threshold will be removed. This will affect VAT thresholds in Liechtenstein as they are meant to be aligned with those of Switzerland.

Tax rates

LIE-143D It is now at 8% in general with certain goods and services at 2.5%. Banking services and some other services are exempt entirely. Hotels and other accommodation for tourists are levied with a special rate of 3.8%. Exports generally are zero-rated. VAT returns are required quarterly.

Tax assessment

LIE-143E As a matter of principle, the tax is levied on all stages of production, trade and the services sector.

Value added tax is a self-assessment tax. Every accounting period, the taxable person settles his accounts with the tax authorities by:

(a)adding up all of his turnover subject to taxation;

(b)assessing the VAT due thereon;

(c)deducting the tax credits from the assessed tax;

(d)paying the balance to the tax authorities.

Usually, the taxable person accounts for his taxable turnover quarterly; services imported are accounted for annually. Self-assessment must be carried out within 60 days from the end of the accounting period. VAT returns are required to be submitted quarterly.

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LIE-144 Other taxes

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Other taxes

LIE-144 For people who are interested in long-term tax planning, especially in the field of the transfer of assets to heirs, the following further taxes will be of interest.

Capital and profits tax

LIE-145 Companies with legal personality are subject to capital and profits tax, as are establishments, foundations and trust enterprises if they engage in commercial activities in Liechtenstein, and also foreign companies having a permanent establishment in Liechtenstein.

Capital tax of 0.2 per cent is levied on the capital paid up at the end of the financial year plus hidden and declared reserves (minus the assets growth of the current year).

Profits tax is levied on the basis of the net profit/capital ratio of the taxable person and amounts to a minimum of 12.5 per cent and a maximum of 15 per cent. Depending on the relation of distribution and taxable capital, this tax rate increases by 1 per cent up to a maximum of 5 per cent.

Coupon tax

LIE-146 This tax was abolished on January 1, 2011. The subject of this tax were the coupons of certain securities issued by residents and documents equivalent to such coupons.

The tax rate was 4 per cent and is levied on the amount repaid by the coupon debtor in redemption of the coupon, or the amount paid, set off or credited.

The taxable person was the debtor of the coupon or taxable monetary disbursements. The coupon tax is to be assessed by the taxable person.

Stamp duties/formation or revenue stamp duty

LIE-147 Stamp duty is levied in particular on:

(a)the establishment of participating interests in legal entities with a capital divided into shares;

(b)the increase in nominal value of such participating interests; and

(c)contributions by participants to such legal entities received without returning any corresponding equivalent (i.e. shares or bonds).

The usual tax rate is 1 per cent in line with the rate in Switzerland. Where a company is formed with its capital divided into parts, no stamp duty is levied provided that the assets contributed at the time of formation or increased afterwards do not exceed CHF250,000. In the case of bonds and money-market papers there is a reduced rate, and in special cases such as mergers there is no liability to this duty at all. The taxable person is the legal entity.

In all cases in which the Swiss Confederate Stamp Duty does not apply on the occasion of a formation, capital increase or change of hands of property right (establishments, foundations and other legal entities whose capital is not divided into shares) a Liechtenstein formation or revenue stamp duty is due at the formation, capital increase or change of hands. In contrast to stamp duty, the assessment basis of this duty is only the nominal capital or the increase in nominal capital. Therefore, contributions made without a corresponding equivalent (such as a corresponding increase in nominal capital) are not subject to this duty.

The rate of the Liechtenstein formation or revenue stamp duty is usually 1 per cent, although no duty is levied on assets contributed at the time of formation or increased afterwards not exceeding the amount of CHF1 million. This duty is reduced from 1 per cent to 0.5 and 0.3 per cent for assets exceeding CHF5,000,000 and CHF10,000,000 respectively.

For ecclesiastical, charitable and family foundations as well as foundations whose main object is the administration of assets, the participation in or the permanent administration of other enterprises, and which do not engage in commercial activities, the foundation or revenue stamp duty is reduced to 0.2 per cent (this duty is reduced to 0.1 and 0.06 per cent for assets exceeding CHF5,000,000 and CHF10,000,000 respectively); however, there is always a minimum duty of CHF200.

Special company taxes

General

LIE-148 Foreign insurance companies active within the country, domiciliary and holding enterprises as well as investment companies, enjoy special treatment in the fields of property and gains tax as well as capital and profits tax.

Every foreign insurance company that receives premium income in Liechtenstein is regarded as “active within the company”.

The Law of State and Municipal Taxes defines domiciliary enterprises as legal entities entered in the Public Register that merely have their domicile (with or without offices) in Liechtenstein and do not engage in commercial or business activities here. Trust property is treated in the same way as domiciliary enterprises, if it is deemed to be foreign.

Holding enterprises are defined by the Law of State and Municipal Taxes as legal entities entered in the Public Register, as well as foundations not entered, whose exclusive or main object or purpose is the administration of assets, the participation in or the permanent administration of participations in other enterprises.

Privileged treatment in taxation

LIE-149 In place of capital and gains tax, foreign insurance companies active within the country only pay a tax of one per cent on the premium income from life and annuity insurances and two per cent on all other premium income.

Domiciliary and holding enterprises are exempt from property, gains and profits tax (with the sole exception of property tax on domestic real estate). Furthermore, annual capital tax is levied at a privileged rate of 0.1 per cent (CHF1,000 per annum minimum). In the case of foundations, this tax rate is reduced to 0.075 per cent for assets exceeding CHF2 million and to 0.05 per cent for assets exceeding CHF10 million. As to investment companies, this tax rate is reduced to 0.4 per cent for assets exceeding CHF2 million.

Capital tax is assessed and collected by the Liechtenstein Tax Administration, and the minimum tax of CHF1,000 has to be paid annually in advance.

In the case of legal entities that must establish and submit balance sheets (companies limited by shares and legal entities that engage in commercial activities or whose object allows such activities), assessment by the Tax Administration is carried out on the basis of the balance

sheets submitted; with all other legal entities (in particular also with foundations) and trusts this is done on the basis of the assets disclosed in the articles or trust deed.

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LIE-150 Business activities

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General

Business activities

LIE-150 A businessman resident in Liechtenstein often tends to conduct his business activities in the form of a legal entity (e.g. a company limited by shares or an establishment). The reason for this has nothing to do with estate planning but often lies in the fact that in contrast to a private firm or commercial partnership, the profit, of a legal entity is not subject to social insurance contributions, and profits of a person participating in a legal entity are not subject to gains tax.

For a businessman resident abroad who wants to engage in business activities in Liechtenstein, usually the only way usually to do this is by participation in a Liechtenstein legal entity, since Liechtenstein trade law requires a Liechtenstein domicile or residence for the independent pursuit of a trade. On the other hand, if all other requirements are met, a legal entity with domicile in Liechtenstein is granted an official licence if the majority of participations in the legal entity is in the hands of persons domiciled or resident in Liechtenstein.

Since probate proceedings concerning those parts of the estate of a businessman resident abroad that consist of participations in Liechtenstein legal entities will in any case not take place in Liechtenstein, there will be no estate tax and/or inheritance tax due unless the domicile or residence of one of his heirs was in Liechtenstein, and no equivalent tax was due abroad. Accordingly, there is no necessity for tax planning in the event of death from the point of view of Liechtenstein tax law.

Real estate

LIE-151 The acquisition of real estate located in Liechtenstein requires the approval of the competent Real-Estate Transfer Authority. This also applies to the transfer of real estate by inheritance, unless the transfer of real estate the inheritance is to close relatives of the deceased.

Approval by the Real-Estate Transfer Authority may only be granted if there is a justified interest. Such justified interest is only rarely considered to exist for persons with domicile or residence abroad. Also the transfer of real estate to legal entities is only granted as an exception by Real-Estate Transfer Law.

In view of these restrictive rules of real estate transfer law, there is not much room for estate planning. Furthermore, property tax on real estate within the country would continue to be due even if the approval of the Real-Estate Transfer Authority could be obtained for a transfer of real estate to an enterprise subject to special company taxes.

Foundations and trusts

LIE-152 The ideal legal instruments in the field of estate planning are foundations and trusts. This applies in particular in those cases in which the domicile or residence of the founder or settlor, as well as the beneficiaries, is abroad.

End of Document

LIE-153 Founder and/or beneficiaries with domicile or residence in Liechtenstein

Foundations

Founder and/or beneficiaries with domicile or residence in Liechtenstein

LIE-153 The (additional) endowment of assets to the foundation at its formation or at a later time for its purpose is subject to gift tax, unless at the time of formation or additional endowment only the beneficiaries had domicile or residence in Liechtenstein, and had to pay an equivalent tax for the (additional) endowment abroad. In this case, no gift tax would be due in Liechtenstein.

When calculating the amount of gift tax, it is current practice to consider the degree of relationship between the founder or additional endower and the beneficiaries, with the effect that in the case of a foundation formed for the benefit of close relatives or an additional endowment to such a foundation, the tax rate is only 0.5 per cent plus the corresponding municipal surcharge on the tax amount.

According to current practice, payments from the income of the foundation's assets to the beneficiaries are subject to gains tax, regardless of the nature of this income (interest, capital gains, etc). In contrast to this, payments from that part of the foundation's assets on which gift tax was paid when the foundation was formed or to which additional endowments were made are not subject to further taxation.

Founder and/or beneficiaries with domicile or residence abroad

LIE-154 If neither the founder nor additional endower nor the beneficiaries of the foundation are resident in Liechtenstein, the (additional) endowment to the foundation is not subject to gift tax.

Payments made to beneficiaries resident abroad are not subject to taxation in Liechtenstein, regardless of whether or not the founder is resident in Liechtenstein.

Taxation of a foundation

LIE-155 Regardless of the residence of the founder and/or beneficiaries, the foundation itself is subject to annual capital tax of 0.1 per cent with a minimum amount of CHF1,200 (this tax rate of 0.1 per cent being reduced to 0.075 per cent for assets exceeding CHF2,000,000 and to 0.05 per cent for assets exceeding CHF10,000,000). It will generally be subject to the general income tax of 12.5%.

However, the foundation is exempt from property tax (0.96 per cent maximum) and gains tax (18.90 per cent maximum) or profits tax (7.5 per cent minimum to 20 per cent maximum), assuming that the foundation does not own real estate within the country (property tax would be due on domestic real estate).

The Liechtenstein Tax Administration also permits foundations to voluntarily subject themselves to property tax. In this case, payments to resident beneficiaries are no longer subject to gains tax.

When the foundation is established, and also on later increases in nominal capital, the Liechtenstein formation and revenue stamp duty of 0.2 per cent (CHF200 minimum) is usually to be paid on the nominal capital fixed in the articles of the foundation, which nominal capital need not be equal to the assets of the foundation, and in practice usually is not; in general, the minimum amount of nominal capital of CHF30,000 is the figure fixed in the articles.

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LIE-156 Applicable principles of taxation

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Trusts

Applicable principles of taxation

LIE-156 The act of placing assets under the control of a trustee resident in Liechtenstein for the benefit of beneficiaries not identical with the settlor is basically subject to the same principles of taxation as the (additional) endowment of assets to a Liechtenstein foundation. Trusts are exempt from taxation in Liechtenstein.

Property and gains tax or capital tax

LIE-158 In contrast to the foundation and if domestic trust assets are transferred to a resident trustee (this includes movable property of a settlor resident in Liechtenstein which was already subject to property tax, as well as real estate located in the country), property and gains tax is levied on these domestic trust assets, the trustee being the taxable person.

However, if the trust property is proved to be foreign, the trust is treated just like a foundation and therefore is subject to the same special company taxes, which means that with regard to this foreign trust property, the trustee is neither subject to property nor gains nor profits tax. The trustee only has to pay an annual capital tax of 0.1 per cent, the minimum annual amount being CHF1,000.

No formation or revenue stamp duty is due on the creation of a trust.

Payments

LIE-159 In all cases in which the trustee is not subject to property or gains tax, payments to beneficiaries are not subject to any further taxation.

On the other hand, if a trust is only subject to the special company taxes (capital tax of 0.1 per cent), gains tax has to be paid on all payments of income to beneficiaries resident in Liechtenstein; beneficiaries not resident in Liechtenstein are not subject to taxation as regards payments from the trust property.

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LIE-160 General

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Anti-tax avoidance

General

LIE-160 In the field of the avoidance or reduction of taxes by unlawful methods, Liechtenstein tax law distinguishes between tax avoidance, tax evasion and tax fraud.

In addition to this, the Liechtenstein Law of State and Municipal Taxes also cites regulatory and procedure offences and the offence of endangering tax collection (the latter, however, only in connection with coupon tax and VAT).

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LIE-161 Definition

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Anti-tax avoidance

Tax avoidance

Definition

LIE-161 Tax avoidance is characterised by the fact that the taxable person chooses an unusual or peculiar procedure not corresponding to economic facts with the exclusive objective of avoiding or reducing taxes. It should be distinguished from the serious offences of tax evasion and tax fraud.

Legal Consequences

LIE-162 In cases of tax avoidance, the Tax Administration uses the “economic approach”, which means that the Tax Administration proceeds as if the usual procedure had been chosen, and the tax avoided or saved must be paid retrospectively (retrospective tax). No punishment is stipulated for tax avoidance; if applicable, interest is levied on the overdue retrospective tax.

Formation of legal entities

LIE-163 According to current Liechtenstein tax jurisdiction, the use of legal entities is not regarded as tax avoidance even if they are entirely controlled by a single physical person.

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LIE-164 Definition

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Part II Taxation

Anti-tax avoidance

Tax evasion

Definition

LIE-164 Tax evasion means that by making incorrect or incomplete statements in tax returns, tax declarations or information concerning a tax to be paid by him, a taxable person prevents the collection of such taxes, or that taxes to be paid are culpably withheld in any other way. Therefore, tax evasion may also be committed by not filing a tax return or declaration.

Legal consequences

LIE-165 In cases of tax evasion, a penalty tax of 100 to 300 per cent is levied in addition to the retrospective tax; however, the penalty tax may be reduced by half if there is only slight negligence by the taxable person, or if the tax saved is less than ten per cent of the tax to be paid.

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LIE-166 Definition

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Anti-tax avoidance

Tax fraud

Definition

LIE-166 Tax fraud is defined as tax evasion committed by the deliberate use of account books or other documents that are false, falsified, or incorrect in content.

In order to commit tax fraud, the taxable person therefore has to act with intent to mislead the tax authorities as to the facts, and this intent must be realised with quite specific means (different from those used to commit tax evasion).

Legal consequences

LIE-167 Tax fraud is a criminal offence punishable by a fine or imprisonment of up to six months. In addition to that, the tax saved or prevented must naturally be paid retrospectively, including an overdue interest.

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LIE-168 Endangerment of tax collection and violation of shifting rules

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Endangerment of tax collection and violation of shifting rules

LIE-168 These offences concerned coupon tax but coupon tax was abolished on January 1, 2011.

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LIE-169 Self-accusation

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Anti-tax avoidance

Self-accusation

LIE-169 If in cases of tax evasion or tax fraud the offender declares his offence (without an immediate danger of being discovered existing at the time), he will not be punished. In this case he is only liable to pay the retrospective tax plus 25 per cent on the retrospective tax.

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LIE-170 Statute of limitation

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Anti-tax avoidance

Statute of limitation

LIE-170 Prosecution and the carrying out of punishment for tax evasion, tax fraud, endangerment of tax collection and violation of shifting rules are subject to statutory limitation within a term of five years. The term commences with the end of the year in which the offence was last committed.

The term of limitation is suspended as long as the offender is abroad, and interrupted by any acts of investigation directed against the offender. However, the term of limitation cannot be extended to more than double its original length by suspension or interruption.

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LIE-171 Miscellaneous

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Anti-tax avoidance

Miscellaneous

LIE-171 In addition to the Penal Code, other Liechtenstein laws and laws applicable in Liechtenstein contain penal provisions with regard to the prevention or reduction of taxes, such as the Swiss Bundesgesetz iiber die Stempel-abgaben (Federal Law on Stamp Duties) and the Value Added Tax Act.

The penal provisions specified in the Value Added Tax Act concerning endangerment of tax collection, tax evasion, tax fraud and self-accusation differ in part from those in the Law of State and Municipal Taxes.

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Double taxation relief

LIE-172 As already mentioned (see para 7 *above*) the Principality of Liechtenstein has concluded agreements for the prevention of double taxation with the Republic of Austria as well as with Switzerland.

The main objective of the double taxation agreement concluded with Switzerland is to prevent the double taxation of incomes of frontier commuters, i.e. those persons who live in one of the contracting states, but work in the other and return home every day after work.

Because of the limited importance of the agreement concluded with Switzerland, only the agreements with the Republic of Austria concerning the prevention of double taxation will be commented upon in detail.

End of Document

LIE-173 Double taxation agreement with the Republic of Austria of 5 November 1969

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Part II Taxation

Double taxation relief

Double taxation agreement with the Republic of Austria of 5 November 1969

LIE-173 This Agreement is basically valid for all physical persons and legal entities domiciled or resident in one of the two contracting states, i.e. who are taxable in these countries because of their domicile or permanent residence (physical persons) or which have their domicile or centre of business there (legal entities).

"Companies" and trust property that, pursuant to Liechtenstein tax law, are exempt from property, gains and profits tax are expressly *not* affected by this agreement, unless physical persons or corporations, foundations and public law establishments participate in or benefit from such companies and trust property.

The taxes covered by the Agreement are all ordinary and extraordinary taxes levied on total income, total property or parts of these, including taxes on capital gains made in the sale of movable and immovable property as well as taxes on asset growth. For the Principality of Leichtenstein, the taxes covered by this Agreement are gains tax, the company taxes, capital gains tax on real estate, property tax and coupon tax.

The Agreement uses two methods to prevent double taxation.

First, in all cases in which, pursuant to the national legislations of the contracting states, a tax on income or property would have to be paid in both countries, an exemption from this tax in one of the contracting states is agreed upon.

Secondly, with regard to certain types of income (such as dividends, interest, etc), taxation in both countries, pursuant to the national legislations, remains in effect but in the taxable person's country of domicile or residence, the taxes on income paid in the other state are deductible.

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LIE-174 Agreement on the Implementation of the Refunding of Taxes levied by Deduction at Source of 12 October 1971

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Double taxation relief

Agreement on the Implementation of the Refunding of Taxes levied by Deduction at Source of 12 October 1971

LIE-174 This Agreement was concluded between the government of the Principality of Liechtenstein and the Federal Minister of Finance of the Republic of Austria and concerns the details of implementing individual provisions of the Double Taxation Agreement of 5 November 1969.

End of Document

LIE-175 Double Taxation Agreement with the Republic of Austria on the Matter of Inheritance Taxes of 7 December 1955

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Double taxation relief

Double Taxation Agreement with the Republic of Austria on the Matter of Inheritance Taxes of 7 December 1955

LIE-175 This double taxation agreement initially also included taxes on income and property. However, this part of the Agreement was terminated on 26 June 1968 (and later replaced by the Agreement of 5 November 1969).

The Agreement is intended to prevent the double taxation of persons taxable in one of the contracting states with regard to their estate.

Inheritance tax has to be paid on the movable property of the deceased (with certain exceptions) in the contracting state in which the deceased had his domicile or residence at the time of his death. As regards the immovable property, inheritance tax is due in the contracting state in which the assets are located.

Double Taxation Treaties in existence as at June 1, 2016.

Liechtenstein agreed to a number of Double Taxation Agreements (DTA) and Tax Information Exchange Agreements (TIEA) with the following countries:

Andorra: TIEA January 1, 2010, DTA signed June 30, 2015; Antigua and Barbuda: TIEA January 1, 2010; Australia: TIEA July 1, 2011; Austria: DTA January 1, 1969, Tax Cooperation Agreement January 1, 2014, TIEA January 1, 2016; Bahrain initialled November 20, 2012; Belgium: TIEA January 1, 2015; Canada: TIEA January 1, 2015; China: TIEA January 1, 2015; Czech Republic:

DTA January 1, 2016; Denmark: TIEA January 1, 2011; Germany: TIEA January 1, 2010, DTA March 1, 2013; Faroe Islands: TIEA January 1, 2011; Finland: TIEA January 1, 2011; France: TIEA January 1, 2010; Georgia: DTA initialled May 13, 2015; Germany: TIEA January 1, 2010; DTA 1 January 2013; Greenland: TIEA January 1, 2010; Guernsey: DTA January 1, 2016; Hong Kong-China: DTA January 1, 2012; Hungary: DTA initialled June 29 2015; Iceland: TIEA January 1, 2011; DTA Signed June 27, 2016; India: TIEA April 1, 2013; Ireland: TIEA January 1, 2010; Italy: TIEA February 26, 2015, Amendment Protocol February 26, 2015; Japan: TIEA January 1, 2013; Luxemburg: DTA January 1, 2011; Malta: DTA January 1, 2015; Mexico: TIEA January 1, 2015; Monaco: TIEA January 1, 2010; Netherlands: TIEA January 1, 2010; Norway: TIEA January 1,2011; San Marino: DTA January 1, 2012;

Sweden: TIEA January 1, 2011; Switzerland: DTA January 1, 1995, amendment DTA initialled July 10, 2015; Singapore: DTA January 1, 2015; St. Kitts and Nevis: TIEA January 1, 2010; St. Vincent and Grenadines: TIEA January 1, 2010; South Africa: TIEA January 1, 2014; Singapore: DTA January 1, 2015; Sweden: TIEA January 1, 2011; Uruguay: DTA January 1, 2013; United Arab Emirates: DTA initialled February 27, 2015; United Kingdom: TIEA January 1, 2010; United States of America: TIEA January 1, 2009.

End of Document

LIE-176 Domestic taxes

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Enforcement and exchange of information

Enforcement

Domestic taxes

LIE-176 If final tax orders of the Liechtenstein Tax Administration against a tax debtor domiciled or resident in Liechtenstein or against a foreign tax debtor with assets in Liechtenstein remain unpaid, they are enforced by way of judicial enforcement.

It should be noted in this context that, without his consent, enforcement against a Liechtenstein citizen's immovable property located in Liechtenstein is only possible by way of compulsory entry of a mortgage or by sequestration, but not by foreclosure sale.

Foreign taxes

LIE-177 Foreign taxes as well as other foreign public duties must not be collected in Liechtenstein (with minor exceptions, such as court or administration fees incurred by request from a Liechtenstein authority to a foreign authority).

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LIE-178 Exchange of information

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Exchange of information

LIE-178 Liechtenstein tax secrecy obliges all persons concerned with or consulted in the implementation of the Law of State and Municipal Taxes to maintain silence on the private and business affairs of the taxable person and on the proceedings of the tax authorities.

As regards holding and domiciliary enterprises as well as persons subject to annuity tax, this tax secrecy is absolute; in all other cases, tax secrecy may be lifted under certain circumstances stipulated by the law, e.g. if a taxable person proving a justified interest asks the Tax Administration to provide information from the Tax Register concerning tax assessment.

The violation of tax secrecy is punishable by fines and imprisonment. However, the offender is only punished on request of the person whose interest in secrecy has been violated.

Foreign authorities

LIE-179 In the context of the Double Taxation Agreement concluded with Austria on 5 November 1969, it was stipulated that if a person domiciled or resident in one of the contracting states claims to have been subject to taxation violating the Agreement, this person may present the case to the competent authority of the state where he is domiciled or resident. If the authority considers the objection to be justified, it will contact the competent authority of the other contracting state in order to settle the matter. In this case, the competent authorities of both contracting states have to exchange the information necessary or possibly necessary for the assessment of the case. Therefore the principle of tax secrecy is broken within these close limits.

As already mentioned several times, some provisions of Swiss tax law are also applicable in Liechtenstein because of the Customs Treaty concluded with the Swiss Confederation. Furthermore, the taxes concerned are directly levied by the competent Swiss authorities (for the account of Liechtenstein). In this context, Swiss authorities have access to information they might need for levying the taxes concerned.

However, apart from the special cases mentioned above, information covered by tax secrecy must not be disclosed to foreign authorities. Pursuant to the Liechtenstein Penal Code, a person disclosing a business or trade secret to a foreign state for use or other exploitation is to be punished with imprisonment or fined, if applicable, even if the person was not obliged to keep the secret.

It should be mentioned in this context that in 1970, Liechtenstein ratified the European Convention of 20 April 1959 on Mutual Legal Assistance in Criminal Matters. Exercising the powers granted to the contracting states in the Agreement, Liechtenstein has stipulated that a request for legal assistance from a contracting state is not to be complied with if the matter of the request is an action directed at the prevention or reduction of duties or taxes or violating rules concerning measures of monetary, trade or economic policy. This principle has also been laid down in the Liechtenstein National Law of 2000 on International Mutual Legal Assistance in Criminal Matters (Rechtshilfegesetz).

Accordingly, Liechtenstein does not provide legal assistance in matters concerning the prevention or reduction of taxes (and other fiscal duties, such as customs duties), regardless of whether legally speaking these preventions or reductions represent tax evasion or tax fraud.

If there is a conflict between a fiscal and another offence, legal assistance for the joint offence is only granted if a separation of the two offences is possible; otherwise legal assistance is refused, e.g. if legal assistance is requested for the falsifying of an instrument committed for the purpose of preventing tax, since tax fraud cannot be committed without committing falsification of an instrument at the same time.

If a separation of fiscal and common offence is possible, legal assistance is granted as regards the common offence, but only under the condition binding under international law that the information provided to the foreign authority will not be used for prosecuting any fiscal offence.

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LIE-180 Useful websites

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Useful websites

LIE-180 Liechtenstein official website: http://www.liechtenstein.li/en [Accessed 31 July 2016]

Princely House of Liechtenstein: http://www.fuerstenhaus.li/en [Accessed 31 July 2016]

Parliament: http://www.landtag.li [Accessed 31 July 2016]

State Court (Staatsgerichtshof): http://www.stgh.li/englisch [Accessed 31 July 2016]

EFTA Court in Luxemburg: http://www.eftacourt.int ; [Accessed 31 July 2016]

Office of Statistics: http://www.as.llv.li [Accessed 31 July 2016]

Liechtenstein legal provisions: http://www.gesetze.li [Accessed 31 July 2016]

Public Registry: http://www.oera.li [Accessed 31 July 2016]

Hague Conference on Private International Law (HCCH): http://www.hcch.net [Accessed 31 July 2016]

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