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# Company Forms in the Principality of Liechtenstein

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Liechtenstein Association of  
Professional Trustees

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A Survey

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Presented by

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Published by the



Liechtenstein Association of Professional Trustees,  
P.O.B. 814, 9490 Vaduz, Principality of Liechtenstein



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# Introduction

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The Liechtenstein legislator has created legal forms which, in part, are distinct with respect to legal structure and application possibilities from comparable legislation in other countries. This brief summary comments on the company forms which are preferred in practice, i. e.

- the Company Limited by Shares
- the Establishment
- the Foundation

(designated by the legislator as «legal entities» resp. «juridical persons»)

and

- the Trust Enterprise
- the Trust Settlement

(designated by the legislator as «Special Asset Dedications»).

For the sake of simplicity all legal forms are referred to in the following as companies.

In practice, the limited liability company (Gesellschaft mit beschränkter Haftung), the co-operative society (Genossenschaft) and the Association (Verein) are encountered in isolated cases; however, they are not dealt with here.

As a rule, a company is formed in Liechtenstein by a trustee admitted to practice in the country. He forms a company fiducially, in his name, but for the client's account.

Since the «Know your Customer Rule» has been introduced it is required to identify the economically entitled person when opening accounts with Liechtenstein banks. However, discretion is not affected by this requirement because Liechtenstein banks and their employees are subordinated to Liechtenstein's strict banking secrecy. Moreover, the professional bearer of secrets must make sure, particularly having regard to the new Due Diligence Law, that the assets to be contributed have not been acquired in a criminal manner, and he personally must identify or establish the identity of the persons involved and in his regard must also obtain the appropriate documentation and provide a comprehensive profile of the business relationship.

Liechtenstein offers advantages regarding the formation and administration of companies, but resists all inadmissible misuse of anonymity and requires a high ethical and professional standard where the acceptance of mandates and the implementation of transactions are concerned.

The information provided in this treatise is intended to help the busy interested party to become basically acquainted with the constitutive possibilities of the various legal forms. The legal form best suited to the intended purpose or object will be determined during the course of the detailed discussion with the trustee.

Other publications are available which deal in greater depth with the individual legal entities.

The companies active in Liechtenstein with domestic business premises, are subject to different tax and (partly) company laws and are not considered in this treatise; however, domestic permanent establishments are not required in order to manage and maintain an office of any kind or to deal with Liechtenstein banks.



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# General

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## Name

The name is freely selectable in any language (in Latin or German characters). Fancy names are also admissible. The company name is protected (exclusiveness of the registered name). Special permission must be obtained if it is intended to use national and international state or place names in the company name.

## Language

The official language is German. A translation of the German-language formation deed will be prepared upon request.

## Purpose (Object)

Except in the case of the foundation the purpose (object) may provide for the pursuit of commercial or non-commercial activities in any legally admissible form, for example, trade with goods, the acquisition of participations, financing, the administration of real estate, leasing, the administration of assets for certain beneficiaries or for purely charitable purposes. Banking business, however, may only be pursued by banks; the administration of assets for third parties may only be undertaken by licenced Liechtenstein trustees.

Foundations may only undertake commercial activities when such activity is necessary for the achievement of their non-commercial purposes.

## Nominal Capital

The nominal capital, as determined in the articles, may be fixed in Swiss francs, euros and US dollars. However, attention must always be paid to the minimum capital. Upon formation the capital may be donated in cash or kind. The comments relating to the various legal forms must be observed.

## Formation

The juridical persons as well as the trust enterprise are formed by means of a formation deed and articles, which must be submitted to the competent authorities. The types of companies discussed here may be formed by one natural or juridical person. A sole exception here is provided by the company limited by shares, whose formation requires two founders. As a general rule, formation ensues on a fiduciary basis.

## Existence

The company limited by shares, the establishment, the trust enterprise and the foundation under obligation to register first come into existence upon entry in the Public Register (Commercial Register).

The deposited foundation and the trust settlement come into existence simply with the signing of the formation documents.

## Supreme Authority

Every juridical person as well as the trust enterprise requires a supreme authority (the meeting of members, the bearer of founder's rights or, also, another body) to which supreme powers shall be due, for example, the approval of the annual account, the passing of resolution concerning the application of the results, the appointment of other bodies, amendment of the articles.

## Administrative Body

At least one member of the administration (board of directors/board of trustees/foundation board/trustee) must have its law office address in Liechtenstein and be in possession of certain professional qualifications. However, for trust settlements a juridical person with registered seat in Liechtenstein may be the sole trustee. In addition to this Liechtenstein administrative body, any number of natural or juridical persons, domiciled in Liechtenstein or abroad, may be co-opted. The administrative body is the company's implementing body.

## Auditor

The appointment of an auditor is mandatory for the company limited by shares.

In so far as

- the establishment
- the trust
- or the registered foundation

engage in commercial activities or the articles provide for such activities, they also require an auditor. Trustees, trust companies with a trustee concession, auditors and chartered accountants are licensed to act as auditors.

## Legal Representative

The legal representative is the official addressee and connecting link with the authorities, for instance, with the Tax Administration and the Public Register Office. The law does not prescribe a legal representative for trust settlements.

## Beneficiaries

In the case of companies limited by shares the shareholders are entitled to the profit and the assets remaining after liquidation.

In the case of the foundation, the establishment, the trust enterprise and the trust settlement the beneficiaries entitled to the yield and/or the assets are designated either by the founder or the settlor or, depending upon the provisions in the articles, by another body. In addition to the entitlement to beneficial interest, these persons or the body also determine, in the articles and/or by-laws, the conditions and the extent of the beneficial interest. The by-laws which, as a rule, form an integral part of the articles and frequently have priority over these, must not be deposited with the Public Register Office. They may be revocable or irrevocable, modifiable or unalterable. It is also possible for amendments to be admissible to start with and then, following the occurrence of a certain event (as, for example, the death of the founder, settlor), for the by-laws to be unalterable. As a rule, the implementing bodies must, within certain limits, observe the founder's or settlor's instructions. Where no beneficiaries have

been appointed it may be presumed that the founder personally is the beneficiary. In this case succession shall be by inheritance. Under certain prerequisites, as determined by law and the articles, the beneficial interests shall be exempt from creditor's attachment.

### Accountancy

It is required by law that all juridical persons as well as the trust enterprise shall keep books of account. The deposited foundation and the trust settlement are exempt from this requirement. The books of account may be kept in any desired, legal currency and also in any freely convertible currency and also in the English, French, Italian, Spanish or Portuguese language. The annual account which, under certain circumstances, must be submitted to the Liechtenstein Tax Administration, must be accompanied by a German translation.

### Declaration

Establishments, trust enterprises and the registered foundations that do not engage in commercial activities and whose purpose (object) as laid down in the articles does not provide for the pursuit of such activities (thus solely the investment and administration of assets or the holding of participations or other rights, without actually pursuing commercial activities) shall draw up a statement of assets and liabilities each year. Based on this, the Liechtenstein administrative body shall confirm to the Public Register Office that a statement of assets and liabilities is available and that in the preceding year commercial activities were not pursued (the statement of assets and liabilities must not be submitted).

### Time required for Formation

Not more than one week is required to form a company.

### Powers of Attorney

Basically, powers of attorney may be conferred where, upon instruction of the administration, transactions are implemented by third parties. The holder of a power of attorney shall be under obligation to report to the administration. Owing to the liability of the administration it is customary only to confer special powers of attorney which are limited with respect to time.

### Liquidation

Basically, a juridical person entered in the Public Register as well as the trust enterprise may not be dissolved until six months at the earliest after the third call to creditors. Deposited foundations and trust settlements may be deregistered in a few days. The prerequisite for deregistration is, in all cases, the conclusion of liquidation.

### Fees and Taxes

General Note: In the case of the companies organized in the legal form of domiciliary companies/holding enterprises the profit achieved or the growth of assets is liable in Liechtenstein to neither gains tax nor tax on profits.

#### a) Upon formation

##### – Stamp Duty/Formation Duty

Upon the formation of juridical persons whose capital is divided into shares (com-

pany limited by shares, limited liability company, co-operative society) the stamp duty amounts to 1% of the sum which accrues to the company liable to taxation as counter performance for the participation rights (related to at least the nominal value), this if the capital exceeds 250.000 CHF. The same duty also becomes due when the capital is increased or when the bearers of participation rights make contributions without increasing the capital (e.g. when assets are contributed to the reserves), upon the transfer of the domicile from abroad and in the case of the so called change of hands of participation rights in economically liquidated companies.

In the case of the establishment, the foundation and the trust enterprise a formation duty amounting to 1% of the capital, which exceeds 250.000 CHF, as determined in the articles, becomes due upon formation. The same fee also becomes due whenever the capital is increased and when a change of hands takes place (as mentioned in the previous paragraph). The contribution of reserves, however, is not liable to tax. Upon petition, this duty may be reduced 0.5% for capital amounts of CHF 5 million or more, and to 0.3% for capital amounts of CHF 10 million or more. There is a further reduction for ecclesiastical, charitable and family foundations whose sole purpose is the administration of assets, the participation or permanent administration of participations in other undertakings, provided commercial activities are not pursued. Upon application the formation duty then amounts to 0.2% or at least CHF 200.–. In these cases, upon petition, this duty may be reduced to 1‰ for capital amounts of CHF 5 million or more, and to 0.6‰ for capital amounts of CHF 10 million or more.

The formation duty is not applicable to the trust settlement.

– Registration or deposition Fees

A fee which is dependent upon the capital and the legal form, but which amounts to between approximately CHF 350.– and CHF 700.– at least becomes due upon registration in the Public Register or (selective) deposition of formation documents, as provided by law. Finally, in the case of the company limited by shares, the fees must be added for the drawing-up of the legally prescribed public document concerning the formation procedure as well as the costs of the legally prescribed announcement in the official publication journals.

b) In consequence

– The Special Corporation Tax (Capital Tax)

All juridical persons as well as the trust enterprise and the trust settlement are subject to the special capital tax amounting to 0.1% of the net assets, at least, however, CHF 1000.– per annum. This tax is payable in advance.

– Coupon Tax

In the case of companies whose capital is divided into shares (i.e. mainly the company limited by shares, the limited liability company, the co-operative society) the Liechtenstein coupon tax of 4% becomes due upon payment to the participants of profit shares (or the settlement of other taxable performances). The coupon tax is payable by the subscriber.

– Turnover Tax on Securities

In general, this amounts to 0.15 % for domestic securities (Switzerland and Liechtenstein) and 0.3 % for foreign securities. The banks and brokers are normally liable for settlement; so, too, are other persons, in so far as they professionally undertake the acquisition and sale of securities. In addition, participation companies are deemed, under certain prerequisites, to be registered dealers in securities.

– Value Added Tax (VAT)

Since January 1<sup>st</sup>, 1995 the turnover tax (referred to as WUST) has been replaced by the value added tax (VAT). Liechtenstein holding companies and domiciliary enterprises are exempt from VAT provided they have no domestic turnover. «Domestic» embraces the common Swiss/Liechtenstein economic area.

The VAT generally amounts to 7,6%.

The VAT is levied on:

- all domestic deliveries of goods and the provision of services;
- the importation of goods;
- goods consumed and services provided domestically;
- services in excess of CHF 10 000.– procured abroad.

For certain articles of daily use (e.g. food and beverage as well as cereals, medications, newspapers) a reduced rate of VAT is applied. At the present time this amounts to 2.4%.

Exports are exempt from VAT.

– Customs Duties

– Other Fees

Fees also accrue from the certification of signatures, the procurement of official confirmations and extracts from the Commercial Register, the granting of permission to register or deposit, the appointment of a liquidator, etc.

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# Company Limited by Shares

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Provided the somewhat higher tax burdens and, in certain cases, the stricter formal provisions are acceptable, the company limited by shares is suitable for all economic objects, in particular for active international commercial transactions, as a holding organization for subsidiary companies, etc. However, for the regulation of private asset relationships and for straightforward asset administration/asset security other organizational structures are preferable.

## Nominal Capital

The minimum capital must be CHF 50 000.—, EUR 50 000.— or USD 50 000.—.

## Shares

Bearer or registered shares are admissible; the minimum nominal value is not stipulated. It is also possible to issue voting shares. It is not required to observe any procedure in the transfer of bearer shares. The law does not prescribe any obligatory qualifying share for the administration.

## Governing Bodies

The general meeting is the supreme authority and must be summoned at least once a year to approve the annual account and deal with any other duties as provided for by law and in the articles.

The board of directors conducts and manages the company business.

It is the duty of the audit authority to examine the annual account and report to the general meeting.

## Submission of Balance Sheet

The annual account examined by the audit authority is required to be submitted to the Liechtenstein Tax Administration.

## Taxes

Basically, in the case of this form of company, the special corporation tax (capital tax) amounting to 0.1% of the capital and visible reserves, at least, however, CHF 1 000.— is payable annually. Coupon tax amounting to 4% of the distributed profits is also payable. The profit actually achieved is not subject to tax. Please refer to the heading «Fees and Taxes», under «General».

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## Establishment and Trust Enterprise (Trust reg.)

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These two legal forms, of purely Liechtenstein coinage, are extremely versatile. The scope for determining the organization is very wide. They may be structured in the manner of a corporation, or their main characteristics may be foundation-like and thus, depending upon the structure, may provide an instrument for commercial objects or for the administration of assets.

### Nominal Capital

The minimum capital must be CHF 30000.– or the equivalent value in any desired legal currency and may be divided into units of shares (with or without the character of securities).

### Governing Bodies

In the case of the normally encountered structure the governing rights are due to the supreme authority (founder). As a rule, the said right is transferred by means of an instrument of assignment (that is documentary evidence concerning ownership).

The property rights may also be assigned to persons other than the bearer(s) of founder's rights (please refer to the heading «Beneficiaries»).

The administration is undertaken by the board of directors in the case of the establishment and by the board of trustees in the case of the trust enterprise.

In so far as commercial activities are undertaken or the articles make provision for such activities, an audit authority must be appointed as a third governing body.

Otherwise, as in the case of the foundation, further governing bodies may be considered.

### Beneficiaries

Where reference to the determination of the economic benefit is lacking, it may be presumed that the bearer of founder's rights (in the case of the establishment) or the settlor (in the case of the trust enterprise) personally is the beneficiary. Otherwise, please refer to the comments under «General».

### Submission of Balance Sheet

In so far as commercial activities are undertaken or, pursuant to the articles, such activities are possible, the annual account examined by the auditor must be submitted to the Liechtenstein Tax Administration.

### Declaration

The obligation to declare (please refer to the comments under «General») exists when commercial activities are not undertaken and the articles do not make provision for such activities.

### Taxes

In Liechtenstein, the profit achieved as well as the distributions to the beneficiaries are neutral with respect to taxation. Basically, the capital tax of 0.1% of the capital as determined in the articles, and the visible reserves, but at least CHF 1000.– per annum, must be observed. Further information is provided under «General», heading «Fees and Taxes».

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# Foundation

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The foundation may be formed as a pure family foundation (for the defrayal of expenses for upbringing and education, outfitting and equipping, etc.), as a non-profit making foundation (support and promotion, e.g. of a charitable, artistic, scientific, social nature) or as an ecclesiastical foundation. The establishment of a foundation as a purely maintenance foundation may also be considered.

The foundation is not suitable for the pursuit of commercial objects. Commercial activities may only be undertaken when such activity serves to achieve the foundation's non-commercial purpose or the type and scope of the participations held require the facilities provided by a commercial undertaking.

Only the non-profit making foundation is subject, under certain circumstances, to official supervision.

## Formation

Upon formation, the founder donates assets definitively for a certain specific purpose and regulates the beneficial interest. To a justifiable extent the founder may reserve certain rights by occupying a position (as a member of the foundation council, curator, protector) or by the inclusion of an appropriate provision in the articles/by-laws/regulations.

## Existence

The foundation that is not under obligation to register comes into existence with the preparation of the deed of foundation, that which is under obligation to register, only upon entry in the Public Register.

## Registration or Deposition

All foundations that undertake commercial activities in order to achieve their non-commercial purpose (e.g. youth hostel, old people's home, welfare foundation in association with an enterprise) are under obligation to register.

The mere obligation to deposit the foundation documents with the Public Register Office (without by-laws or regulations) is applicable to ecclesiastical foundations, pure and mixed family foundations (maintenance foundations, for instance) as well as foundations whose beneficiaries are specifically designated or definable. In this case evident existence of the foundation is not provided by any register and inspection is only possible when proof of an entitled interest is provided.

## Nominal Capital

The minimum capital (foundation fund) must be CHF 30 000.– or the equivalent value in any desired legal currency.

## Governing Bodies

The supreme authority is the foundation council, which conducts the foundation's business within the intendment of the articles, by-laws and regulations. The founder may designate other bodies as, for example, the auditor, to investigate the activities

of the foundation council or limit these activities by means of the rights of protectors, curators or collators to instruct, check or veto.

The appointment of an auditor is mandatory for registered foundations with a business conducted in a commercial manner.

#### Beneficiaries

Basically, beneficiaries must be designated in some way (for example, by reference to descent, sex, etc). Please refer to the comments under «General».

#### Submission of Balance Sheet

In so far as the registered foundation undertakes commercial activities or the articles provide for such activities, the annual account, examined by the auditor, must be submitted to the Liechtenstein Tax Administration, Vaduz.

#### Declaration

Voluntarily registered foundations that do not undertake commercial activities and whose purpose as determined in the articles does not provide for such activities are under obligation to declare (please refer to the comments under «General»). The deposited foundation is not required to declare.

#### Taxes

Assets donated by persons domiciled abroad are not subject to the Liechtenstein gift tax. In Liechtenstein, the distribution of beneficial interest to recipients living abroad is neutral with respect to tax. Basically, the capital tax of 0.1% of the foundation fund and the visible reserves (net assets), but at least CHF 1000.– per annum, must be observed. Net assets of CHF 2 million and above are taxed at the rate of 0.75 ‰ and net assets of CHF 10 million and above at the rate of 0.5 ‰. There are further comments under «General», heading «Fees and Taxes».

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# Trust Settlement

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The trust settlement is based on the Anglo-American model.

This legal instrument may be used in a similar manner to the foundation, its structure, however, is somewhat less hampered, because there is no restriction of purpose as provided for in the foundation law.

The settlor transfers a movable or immovable asset or right (as trust property) to the trustee with the obligation to hold or make use of this as trust property against all others in his own name as an independent legal owner for the benefit of one or more third parties (beneficiaries).

In contrast to the foundation, a juridical person is not involved, but a kind of contractual relationship.

## Formation

The participants are:

- The settlor; the contractual relationship (trust deed = act of creation) must be drawn up in writing,
- the trustee(s) (the acceptance of the office must ensue in writing),
- the beneficiary (beneficiaries).

## Existence

In particular, the trust comes into existence with the signing of the agreement (trust deed) by settlor and trustee or by means of a trust letter. The optional entry in the Public Register (instead of deposition) does not have a constitutive effect.

## Registration or Deposition

In so far it is desired to register in the Public Register the following information must be provided: Date of formation, designation of the trust settlement, duration (may be indefinite), name and domicile of the trustees (not, however, the beneficiaries and the settlor).

As an alternative to registration it is possible to deposit the trust deed with the Public Register Office. In this case, the existence of the trust settlement is not evident in any register and inspection is only possible when an entitled interest can be proven.

## Trust Property

There is no stipulation concerning minimum trust property (donation of assets).

## Administration

It shall be incumbent upon the trustee(s) to attend to the administration. The trustee shall administer the assets in his own name, with personal responsibility, for the benefit of the beneficiaries.

## Beneficiaries

The settlor may be a beneficiary, but the trustee may not be the sole beneficiary.

Where there is no recognizable reference to beneficiaries the law assumes that the settlor personally is the beneficiary. Please refer also to the comments under «General».

### Supervisory Bodies

In order to ensure the observance of the provisions in the trust deed an auditor, a protector, a curator or a collator may be appointed, as described in the case of the foundation under «Governing Bodies».

### Foreign Law

Trust settlements pursuant to foreign law may be formed in Liechtenstein. In relationships to third parties, however, Liechtenstein law shall be applicable.

### The Drawing Up of a Balance Sheet

This is not obligatory. Thus it is not required to appoint an auditor and the obligation to submit a balance sheet is not applicable. The trustee must keep his personal assets distinctly separate from the trust property. In order to achieve this it may be necessary to keep orderly books of account.

### Taxes

Assets which are transferred to the Trustee by persons domiciled abroad as well as distributions to beneficiaries domiciled abroad are not subject to tax in Liechtenstein. Basically, therefore, attention must be paid to the capital tax of 0.1% on the net assets, but at least CHF 1000.– per annum, as described under «General», heading «Fees and Taxes».

# Enclosure



