

The Trust

1. Origin and Legal Basis

Liechtenstein is unique in mainland Europe as the only civil law jurisdiction to have adopted a comprehensive codified form of the Anglo-Saxon common law trust. The relevant statutory provisions are to be found in the Persons and Companies Act of 1926 (PGR), (Articles 897 to 932).

In distinct contrast to Anglo-Saxon law, Liechtenstein law contains neither a restriction on the accumulation of income nor a rule against perpetuities. Thus, a Liechtenstein trust may be established for an indefinite duration.

2. Definition and Purpose

A trust is created when one person (the settlor) transfers property to another (the trustee) with the obligation upon the trustee to administer or use the property in his own name as legal owner for the benefit of one or more third persons (the beneficiaries).

Thus, as far as the outside world is concerned, the trustee is the absolute legal owner of the property. The trust itself does not have independent legal personality, in contrast to the trust enterprise (Treuunternehmen) under Liechtenstein law which is governed by the Law on Trust Enterprises of 1928 (TrUG) which has been incorporated into the PGR as articles 932a, §§ 1 - 170.

A trust may be set up for any purpose (charitable or otherwise) as long as it is not illegal, immoral or impossible. Also, Liechtenstein law recognizes without restriction pure purpose trusts where there is no individually ascertained or ascertainable beneficiary.

3. Creation

An express trust may be created in three ways:

- a. by written agreement between the settlor and trustee (inter vivos settlement);
- b. by unilateral declaration of the settlor, in which case a written declaration of acceptance by the trustee is required; or
- c. by last will and testament.

In all instances, a trust must be expressly designated as such.

4. Registration Requirements

Every trust formed for a duration of more than 12 months must be entered in the Commercial Register. The application for registration must contain the following information:

- a) description of the trust relationship;
- b) its date of creation;
- c) the duration of the trust; and
- d) the surname, first name and place of residence of the trustee (if a legal entity, its firm name and domicile).

All changes in the above details must also be notified and recorded in the Commercial Register.

However, the obligation to register the trust can be avoided if an original or certified copy of the trust instrument is deposited with the Commercial Register within 12 months of creation. All subsequent documents which amend the trust instrument must likewise be deposited.

Whereas the details (recorded in the Commercial Register) of registered entities are open to inspection by the general public, deposited documents may only be inspected by the depositor, his successors and authorized agents, and the counterparties (if any) to the documents in question. Third parties may only seek inspection on written application to the District Court which will take into account the viewpoint of the trustee.

Therefore, in the case of both deposited and registered trusts, the Register fully preserves the anonymity of the beneficiaries. Also by using a nominee settlor the identity of the true settlor need not be revealed.

5. Settlor

The settlor is free to define the terms and conditions of the trust by means of the trust instrument. In particular, he may stipulate:

- that the trust property shall under certain conditions or after a given time revert to him or his successors or to third parties;
- how trustees may be removed and appointed; and/or
- how beneficiaries may be excluded and appointed and, in the event of a beneficiary dying or being excluded, the terms on which the remaining beneficiaries shall become entitled to such beneficiary's share.

However, the settlor may not bind the trustee to comply with the settlor's continuing directions.

6. Trustee

The trustee is under a general obligation to comply with the provisions contained in the trust instrument and in the PGR, to preserve and administer the trust property with the care of a prudent businessman and, where usual or appropriate, to insure the trust property against risk.

He must not deal with the trust property in a manner which might derogate from or frustrate the purpose of the trust. If the trustee is in doubt as to whether an administrative act or a disposition of trust property is authorized or appropriate, he may apply for directions to the District Court of Liechtenstein.

Co-trustees must act jointly (collectively) unless otherwise provided or in the case of an emergency which requires urgent measures.

The trustee must draw up an inventory of the trust property and update it annually, as well as submit

annual accounts to the auditor (if any), to the settlor (if no auditor is appointed), to the beneficiaries if the settlor is dead or unreachable (and if the beneficiaries are entitled to an actionable claim) and under certain circumstances to the District Court of Liechtenstein, unless provided differently in the trust instrument.

If a trustee acts in contravention of the terms of the trust instrument or of the relevant PGR provisions, he is personally liable to the settlor to the full extent of his own assets. The trustee's primary responsibility is to the settlor and, after the settlor's death or earlier withdrawal, to the beneficiaries.

Where a trustee fails to carry out his duties, a co-trustee or beneficiary may apply to the District Court which has power to remove the defaulting trustee and appoint or order the appointment of another trustee.

7. Beneficiaries

Beneficiaries may be named in the trust instrument itself or in a separate instrument of appointment. The latter, unlike the trust instrument, is not required to be deposited with the Commercial Register, and is therefore inaccessible to third parties.

The settlor and trustee may also be beneficiaries; however, the trustee may not be the sole beneficiary under a trust.

8. Protector

An optional safeguard feature is the appointment of a protector who may be an individual, a legal entity such as a trust company, or a committee of persons, usually resident in a jurisdiction different to that of the settlor. The protector is a person known to and trusted by the settlor and/or beneficiaries, such as a family friend or an adviser, who may be given certain

powers of appointment or whose consent is required to particular courses of action by the trustee according to the terms of the trust instrument.

9. Trust Property

In the case of an express trust, the trust property comprises:

- all assets designated as trust property by the settlor;
- all assets acquired by administering trust property; and
- all assets acquired as a substitute for items of trust property which have been destroyed, damaged or removed.

There is no minimum value prescribed for the assets constituting the trust property.

Real property and rights registered in the Land Register must, unless the trust instrument otherwise provides, be transferred into the name of the trustee and will thus take effect against third parties. The trust instrument will usually contain comprehensive provisions for the management and investment of the trust property.

10. Creditors

Creditors of the trustee

Creditors of the trustee have no claim against trust property. Should a trustee go bankrupt, the trust property is regarded as separate property and passes to a co-trustee or replacement trustee.

Creditors of the trust property

The trustee is personally liable without limitation, jointly and severally with any co-trustees, for debts

incurred by him on behalf of the trust insofar as these debts cannot be met out of the trust property.

Creditors and heirs of the settlor

The settlor's creditors may only in limited circumstances have recourse against the trust property where the conditions for the avoidance of gifts or of transactions undertaken prior to the commencement of bankruptcy are met. Heirs of the settlor may have a claim if the law in the case of the settlor entitles them to a compulsory share of the estate (forced heirship). Proper structuring, however, can avoid forced heirship rights.

Creditors of the beneficiaries

The settlor may thwart creditors of a beneficiary by means of an exclusionary provision in the trust instrument. Otherwise, such creditors may assert a claim against the trust property provided the beneficiary himself has a legally enforceable claim.

Termination of the Trust

Generally, the trust terminates when the trust instrument so determines or when the trust property ceases to exist or is exhausted and not replaced.

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