

The Establishment

1. Definition

The private law establishment is a legal form unique to Liechtenstein which has no counterpart in other legal systems. The law defines the establishment as "a legally autonomous, organized, permanent undertaking dedicated to economic or other objects and entered in the Commercial Register as the establishment Register, which has holdings of material and possibly personal resources."

The popularity of the establishment can be explained first and foremost by its flexibility with respect to its organization. Depending on the wishes of the client an establishment may be structured like a one member company, a foundation or a corporation.

2. The Various Forms of Establishments

2.1. The Typical Establishment

The typical establishment is a one member company owned and managed by a single person. He is the holder of the so-called founder's rights. All rights are exercised in accordance with his instructions. He

controls, directly or indirectly, all organs of the establishment or carries out the functions of these organs himself (see 5 below).

2.2. The Establishment Structured Similar to a Foundation (Establishment without Founder's Rights)

This type of establishment has no founder's rights. The board of directors exercises the rights of the founder (see 5.1. below). Thus, the possibility that inheritable (founder's) rights are created is precluded (see 4 below). The client gives the management certain instructions, as he would do in a foundation, with respect to how management should carry out its functions.

Apart from that the client has no influence over the establishment, unless he binds the members of the board of directors to his instructions by a mandate agreement. The board of directors normally is the supreme governing body of the establishment unless an audit authority has also been appointed.

2.3. The Establishment Organized Similar to a Company Limited by Shares

This type of establishment is formed by several people together who own shares in the establishment, an arrangement similar to a company limited by shares. The supreme body of the establishment is the assembly of the Founder's Rights holders.

However, this type of establishment is seldom chosen because of its distinct similarities and analogical legal treatment (especially for tax reasons and with regard to its capitalization) to capital companies.

3. The Formation of the Establishment

The formation of an establishment is undertaken by a natural person or legal entity acting as founder. Generally, a Liechtenstein trustee acts as the representative of the economic founder who gives the respective instructions to establish the entity

In practice the formation of the establishment normally proceeds as follows:

- formation instructions;
- preparation of the articles and formation;
- submission to the Department of Justice, Commercial Register Division;
- registration in the Commercial Register.

3.1. Formation Instructions

In the formation instructions the trustee or lawyer is authorized to form an establishment in a fiduciary capacity according to guidelines given by the client. Consequently, the trustee or lawyer undertakes the formation in his own name and thereby preserves the anonymity of the client vis-à-vis the authorities and other third parties.

3.2. Preparation of the Articles and Formation

The articles must be in writing and signed by the (legal) founder. The articles must, amongst other things, specify the following:

- the name of the establishment, which must contain the word "Anstalt" (the English or French equivalent is permitted), and the seat of the establishment;
- the objects of the establishment, alternatively the nature of its business;
- the estimated value of the establishment's assets in the event they do not consist of cash, and the manner of their procurement and composition;
- the powers of the supreme body; and
- the bodies charged with the management and, if desired, the auditing of the establishment, and how the establishment will be represented.

The statutory capital of an establishment must be at least CHF/EUR/USD 30'000.00. If the capital is divided into shares, the minimum capital must be CHF/EUR/USD 50'000.00. The capital can also consist of non-monetary assets or a combination of money and non-monetary assets. If non-monetary assets form part or all of the capital of the establishment, their value must be professionally appraised.

3.3. Submission to the Department of Justice, Commercial Register Division

Like other legal entities an establishment must be notified to the Department of Justice, Commercial Register Division. The founder must enclose the following documents with the application to register:

- the articles;
- the formation document (i.e. formation resolution or declaration, formation deed) if this is not contained in the articles;

- a declaration that at least one half of the establishment's statutory capital has been paid in or is covered through non-monetary assets which form the capital of the establishment, and how the balance of the capital will be raised or guaranteed. If the capital of the establishment consists of money, the statutory minimum capital (CHF 30'000.00, or CHF 50'000.00 if divided into shares) must be fully paid in. Establishment capital in the form of funds must be deposited with a Liechtenstein or Swiss Bank, which must certify the deposit; and
- a list of the members of the board of directors including their names and addresses, or company names and relevant seats of the members.

3.4. Registration in the Commercial Register

Upon registration in the Commercial Register, which customarily takes place two to three days after notification, the establishment comes into existence and acquires legal personality. As a consequence the liability of the establishment is limited to its capital.

4. The Founder's Rights

If founder's rights are created (as they are in the typical establishment and the establishment organized similar to a company limited by shares) the founder(s) of the establishment is (are) the owner(s) of the founder's rights. Since the trustee or the lawyer customarily acts as legal founder of the establishment for reasons of anonymity, he transfers the founder's rights to his client, the economic owner, by means of a deed of assignment once the establishment has been formed.

The founder's rights are basically simple administrative rights. However, they do comprise some economical, financial elements (property rights)

because the owner of the founder's rights, as supreme body of the establishment, is entitled to appoint, change or exclude beneficiaries or even appoint themselves as a beneficiary of the establishment.

The founder's rights represent the entire powers given to the founder of an establishment. The law provides that the founder's rights may be assigned, inherited or otherwise transferred at any time, but not pledged or otherwise encumbered.

Even if the capital of the establishment is not divided into shares, the founder's rights can still belong to several people.

5. The Organization of the Establishment

5.1. Supreme Body

The supreme body consists of the holder(s) of the Founder's Rights. The law does not prescribe a minimum or maximum number of holders of the Founder's Rights. If there are several holders of the Founder's Rights, resolutions of the assembly of such holders must be passed unanimously unless the articles provide otherwise. The powers of the supreme body are customarily the following:

- appointment and removal of the board of directors and the auditors (if necessary);
- determination of the signing authority of management personnel and the liquidator(s);
- approval of the balance sheet, determination of the annual profits/losses, passage of resolutions concerning the application of the profits/losses;
- discharge of the board of directors and the auditors;
- issuance of by-laws and amendments to the articles and the by-laws;
- appointment of beneficiaries and determination of their rights;

- appointment and removal of the representative; and
- winding up of the establishment, appointment of the liquidator(s) and passage of resolutions concerning the application of the liquidation surplus.

Where the establishment resembles a foundation, the articles provide that the board of directors shall have the powers of the supreme body.

5.2. Board of Directors

The board of directors may consist of one or more natural or legal persons. It is appointed by the supreme body for a maximum duration of three years and its tasks are the management and representation of the establishment. Additionally, it has all the powers and obligations which are not transferred to or reserved for another body.

At least one member of the board of directors authorized to manage and represent the establishment must be a professional trustee licensed in Liechtenstein with domicile either in Liechtenstein or another EEA-member state. Exempted from this obligation are establishments which need to have a managing director under trade law or are supervised by the government, a municipality or any other authority.

The board of directors may grant powers of attorney to third parties including the economic beneficiary. Customarily, the board of directors grants only special powers of attorney with a limited duration because its members are liable for the attorney's actions.

The members of the board of directors are liable to the establishment and in exceptional cases to the holder of the Founder's Rights as well as to the creditors of the establishment for negligent or intentional breach of duty.

5.3. Audit Authority

An establishment which undertakes commercial activities (independent, ongoing activities carried on for profit where the type and size of the company render necessary the facilities of a commercial business and orderly accounting), or whose objects as laid down in the articles allow it to engage in commercial activities, must appoint an audit authority. In all other cases the appointment of an audit authority is only necessary if prescribed in the articles.

The audit authority is appointed by the supreme body. It may not serve for longer than one year when first appointed, and for not longer than three years if and when its mandate is renewed.

Members of the audit authority may neither belong to the board of directors nor be employees of the establishment.

The audit authority has the following duties:

- verification of the annual accounts prepared by the board of directors with respect to procedural correctness and accuracy through an audit of the company books;
- submission of a written report to the supreme body concerning the balance sheet and profit and loss account submitted to it by management;
- obligation to report to the supreme body if any irregularities or infringements of legal or statutory provisions have been discovered.

The articles may provide for further functions and duties.

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Rights as well as to the creditors of the establishment for negligent or intentional breach of duty.

5.4. Other Bodies

The following is a list of other bodies which may be provided for in the articles, but which are only advisable under particular circumstances, for instance if the establishment's capital is large and diversified:

- *Supervisory Board:*
The supervisory board is appointed pursuant to the provisions concerning the board of directors and has the function of permanently supervising the management and collaborating in the administration of the establishment. The names of the supervisory board members must be entered in the Commercial Register.
- *Directorate:*
The articles may provide that the management and the representation of the establishment may be delegated by the board of directors to one or more persons who can be either members of the board of directors or third parties. If these persons are charged with the entire management of the establishment they are collectively referred to as the directorate. In this case the board of directors essentially has the function of a supervisory board.
- *Committee(s):*
The board of directors may appoint from among its members one or more committees. The committee(s) will typically supervise the course of business, prepare the transactions to be dealt with by the board of directors, report to the board of directors concerning all important matters, in particular concerning the drawing up of the balance sheet, and supervise the implementation of the resolutions of the board of directors.

6. Legal Representative

Liechtenstein establishments without commercial activities within Liechtenstein must appoint a legal representative who in turn must be a Liechtenstein national or a national of a EEA-member state with permanent residence in Liechtenstein or a company permanently resident or domiciled in Liechtenstein. The legal representative is entered in the Commercial Register.

The legal representative is obligated by law to receive declarations and communications of all kinds from the Liechtenstein authorities, including service, and to keep files in safe custody.

7. Beneficiaries

The articles or regulations of the establishment may provide for beneficiaries, which is to say persons who shall receive the income from the establishment's assets and/or the actual assets themselves. Details concerning the beneficial interest are specified in the articles and regulations.

The beneficial interest may be qualified, limited or conditional. Unless expressly stipulated, the beneficial interest may be revoked at any time.

As the beneficiaries are usually named in the regulations and since regulations are not deposited with the Commercial Register, the anonymity of the beneficiaries can thus be protected.

If neither the articles nor the regulations provide for beneficiaries, the law then presumes that the holder of the Founder's Rights is the beneficiary. Additionally, unless the articles provide for otherwise, the beneficiaries have the right to request information from the board of directors and are normally entitled to inspect all books of account where their own beneficial rights are concerned.

The articles or regulations may provide that if certain persons cease to be beneficiaries, then other persons are appointed as their successors. The latter are called remaindermen. Generally, they have the same rights and obligations as the beneficiaries.

8. Liquidation of the Establishment

The establishment may be dissolved at any time by a resolution of the supreme body. In the resolution the supreme body appoints at least one liquidator. The liquidator(s) publish the liquidation resolution three times in an official local publication (the two major Liechtenstein newspapers) and invite possible creditors to file their claims within six months.

Following the expiration of this six month period, within which the creditors may file their claims, the assets may be distributed to the ultimate final beneficiaries of the establishment. Once the assets have been distributed the establishment will, upon the application of the liquidator(s), be deleted from the Commercial Register and the legal personality of the establishment terminates.

9. Legal Sources

Persons and Company Law (*Personen- und Gesellschaftsrecht*) of January 20, 1926, Liechtenstein Law Gazette 1926/4, in particular Articles 534 to 551.

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