

THE FOUNDATION

What is a Foundation and what is it for?

The Foundation is a legally and economically independent special-purpose asset that is established as a legal entity for specific purposes. The founder of the Foundation transfers certain assets to the Foundation, which are then managed and utilised by the Foundation board in accordance with the defined purpose of the Foundation and in accordance with the founder's will as defined at the time the Foundation was established. The assets transferred to the Foundation are generally segregated from the founder's personal assets.

Only the Foundation's assets are liable for the Foundation's debts. There is no obligation for the founder to make additional contributions.

Foundations are mainly used for the following purposes:

- Succession planning
- Protection and preservation of assets over generations (asset protection)
- Provide care and support to family members or others
- Charity
- Holding and managing participations in companies
- International tax planning

How is the Foundation created?

A Foundation is established on the basis of a declaration by one or more founders. If the Foundation is established during the founder's lifetime, this declaration can take the form of a written foundation declaration (inter vivos Foundation) or, in the case of a Foundation upon death, in the form of a testamentary disposition or inheritance contract.

The Foundation documents with the minimum legal content must be drawn up. In addition, at least the statutory minimum capital must be paid in or contributed in kind.

In practice, the Foundation is set up by the Liechtenstein professional trustee on behalf of the founder(s).

What minimum capital does the Foundation require?

To set up the Foundation, the statutory minimum capital of CHF 30,000.00 must be paid in or contributed. If the capital is registered in Euros or US dollars, the minimum capital is either EUR 30,000.00 or USD 30,000.00.

The Foundation can be established by means of a cash or non-cash contribution. Contributions in kind must be valued in an expert report. The capital must be freely available to the Foundation as soon as it is established.

What purposes can be pursued with the Foundation?

Foundations can be set up for private or charitable purposes. It is also possible to combine both purposes.

A classic example of a private-benefit Foundation is the Family Foundation. The Family Foundation's assets are primarily used to cover the costs of upbringing or education, to equip or support members of one or more families or similar family interests. A charitable Foundation supports one or more charitable institutions. A Foundation may also have as its purpose the preservation and promotion of company shareholdings held by the Foundation.

Is the Foundation entered in the commercial Register?

Foundations with a predominantly private-benefit purpose do not have to be entered in the commercial Register. Registration can be voluntary.

In contrast, predominantly charitable Foundations must be entered in the commercial register.

What assets can be endowed to the Foundation?

In principle, anything that confers a monetary claim (e.g., bankable assets, receivables, securities, movable and immovable property, equity interests) can be endowed to the Foundation.

Once the Foundation has been established, further endowments of assets can be made at any time.

What documents does the Foundation have and what is regulated in them?

The Foundation deed (Statutes) contains the legally prescribed provisions such as the purpose and organisation of the Foundation.

The founder can draw up a supplementary Foundation deed (By-laws). This document contains elements that do not have to be included in the Foundation deed. As a rule, the supplementary Foundation deed contains provisions on beneficiaries. Moreover, Regulations can be drawn up for the further execution of the documents mentioned.

The founder is free to write a non-binding "letter of wishes" in which he/she expresses his/her ideas regarding the administration of the Foundation and the distributions to the beneficiaries. Although these wishes are not legally binding, they must be taken into account by the Foundation board when making decisions so that the Foundation board acts diligently.

What organs does the Foundation have?

Foundation board: The Foundation board manages the Foundation's business and represents it towards third parties. It is made up of at least two natural or legal persons. One member of the Foundation board must be a Liechtenstein trustee or its employee.

Protector/Protectorate: A Protector or a Protectorate consisting of several Protectors can be established as an additional organ. The protector is a person of trust of the founder. The protector can have a variety of functions, including advising the Foundation board and/or supervising the administration of the Foundation and/or having certain powers of approval.

Supervisory body: The founder can set up a so-called Supervisory body, which has the task of checking once a year whether the Foundation assets are being managed and utilised in accordance with the Foundation's purpose.

Auditor: An Auditor to audit the management and use of the Foundation's assets is mandatory for charitable Foundations. Private-benefit Foundations can voluntarily appoint an Auditor for such an audit.

Representative office: The Representative office is not an organ of the Foundation, however a natural or legal person who acts as the postal address and represents the Foundation in dealings with the authorities. This function is usually performed by a Liechtenstein trustee.

Who is a beneficiary of the Foundation?

The beneficiaries of the Foundation are natural or legal persons who receive or may receive an economic benefit from the Foundation at any time during the legal existence of the Foundation or upon its termination. They are first named by the founder when the Foundation is established and may be amended during the lifetime of the Foundation, provided that this right is reserved.

A distinction is primarily made between entitled beneficiaries and discretionary beneficiaries. According to the Foundation documents, entitled beneficiaries have a legal claim to a benefit from the Foundation's assets or its income. Discretionary beneficiaries, on the other hand, have no enforceable claim to a benefit. Rather, the decision on the choice of the beneficiary, the amount and/or the timing of the benefits is at the discretion of the Foundation board or another organ.

What rights does the founder have?

In principle, the founder has no rights after the establishment of the Foundation. The assets contributed belong to the Foundation and are managed by the Foundation board in accordance with the Foundation documents. However, the founder can reserve certain rights, e.g. the option to amend the foundation documents or revoke the Foundation and have the assets returned to him.

The reservation of these rights should be carefully examined as they may have an impact on tax and asset protection strategies.

Is the Foundation subject to state supervision?

Only charitable Foundations are subject to the supervision of the Liechtenstein Foundation Supervisory Authority (STIFA). Private-benefit Foundations can voluntarily submit to the supervision of the STIFA.

When is the Foundation terminated?

The Foundation is dissolved in the following cases:

→ The term provided for in the Foundation deed has expired (if provided for) or for other reasons specified in the Foundation deed

→ The purpose of the Foundation has been achieved or can no longer be achieved (due to lack of assets)

→ Bankruptcy proceedings are opened against the Foundation's assets (or the court rejects the bankruptcy proceedings for lack of assets)

→ Revocation by the founder (if he has reserved such a right)

→ Dissolution by court order

How is the Foundation taxed?

When the Foundation is established, a founding levy of 2% of the statutory capital, at least CHF 200, must be paid (applies only to the statutory capital and not to subsequent endowments).

Foundations are subject to a flat-rate income tax of 12.5%. Irrespective of the income, an annual income tax of CHF 1,800.00 must be paid. It should be noted that many types of income are tax-free and there are other tax reliefs.

Foundations that do not carry out any economic activity, i.e., basically only generate income from the assets they hold, can obtain the status of a Private Asset Structure (PVS). They then do not have to submit a tax return and are only subject to the annual minimum income tax of CHF 1,800.00.

International tax advice is recommended before setting up a Foundation, as endowments to the Foundation and distributions from the Foundation may have tax consequences abroad.

What reporting obligations is the Foundation subject to?

Since 2017, Liechtenstein has been exchanging tax data with numerous countries as part of the Automatic Exchange of Information (AEOI).

Natural persons are reported depending on their position within the Foundation. The reported data is transmitted to the tax authority of the person's tax domicile.

What KYC requirements is the Foundation subject to?

Liechtenstein has implemented the 4th and 5th EU Anti-Money Laundering Directive (AMLD) into national law.

This requires, among other things, the identification and verification of the identity of the beneficial owners and, prior to distributions, of the discretionary beneficiaries. In addition, the economic background of the total assets of the founder (Source of Wealth) and the assets contributed to the foundation (Source of Funds) must be checked for plausibility or verified.

EXPLORE TAILORED WEALTH MANAGEMENT SOLUTIONS

PRÄSIDIAL-ANSTALT



Stuffen Egg 1, 9495 Triesen
Liechtenstein
info@praesidial.com
www.praesidial.com

For personalized guidance and expert insights on establishing and managing your wealth structures, please contact us to discuss your specific needs.

We are looking forward to hearing from you.