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## III. Liechtenstein Foundations

### 1. The New Foundation Law

- 1926: Enactment of the Liechtenstein foundation law
- 1 April 2009: Entry into force of a totally revised new foundation law
- Recent numbers show that the Liechtenstein foundation sector has shrunked sharply over the last years because of the international tax and location debate  
(<http://www.stifa.li/zahlen-fakten>)



### Zahlen & Fakten

#### Per 31.12.2019:

Nicht eingetragene Stiftungen: 9'239

Eingetragene Stiftungen: 1'789

- ▶ Davon Neugründungen im Jahr 2019: 68
- ▶ Davon Gemeinnützige Stiftungen: 1'379

Rechtseinheiten insgesamt: 25'983

Quelle: Rechenschaftsbericht der Regierung 2019, S. 130 und S. 133

#### Per 31.12.2018:

Nicht eingetragene Stiftungen: 10'166

Eingetragene Stiftungen: 1'824

- ▶ Davon Neugründungen im Jahr 2018: 100
- ▶ Davon Gemeinnützige Stiftungen: 1'392

Rechtseinheiten insgesamt: 27'053

Quelle: Rechenschaftsbericht der Regierung 2018, S. 130 und S. 132

#### Per 31.12.2017:

Nicht eingetragene Stiftungen: 11'230

Eingetragene Stiftungen: 1'802

- ▶ Davon Neugründungen im Jahr 2017: 88
- ▶ Davon Gemeinnützige Stiftungen: 1'355

Rechtseinheiten insgesamt: 28'428

Quelle: Rechenschaftsbericht der Regierung 2017, S. 126



### III. Liechtenstein Foundations

#### 2. Reform Goals/Overview of New Regulations

- Enactment of a «holistic» foundation law
  - Elimination of general reference to trust company law (TrUG)
  - New §§ 1–41 under a new art. 552 PGR
- Strengthening of founder’s responsibility
  - Founder itself stipulates *essentialia negotii* in the foundation act
  - Clarifying of founder’s rights: Non-transferable (by way of contract or inheritance)
  - Codification of fiduciary foundation establishment in § 4 para. 3 PGR: Founder’s rights with the economic founder as the principal (*cf.* § 30 para. 3)



## III. Liechtenstein Foundations

### 2. Reform Goals/Overview of New Regulations

- New regulation of foundation governance
  - External governance: New supervisory authority (STIFA)
  - Internal governance: Codification of controlling rights for beneficiaries
- Assurance of a smooth transition into the new law
  - In principle: «Old law applies to old foundations», with exceptions in art. 1 para. 4 of the transitional provisions (especially with regard to the revised governance)
  - Restructuring of old defective foundations



## III. Liechtenstein Foundations

### 3. The Concept of a Liechtenstein Foundation

- Classification and definition
  - Definition of a foundation: Assets endowed with legal personality and dedicated to a special purpose in accordance with the founder's will
    - Personified special-purpose assets, without owners or members
    - Institutional nature
  - Managed by foundation organs which execute the founder's will
  - Oriented towards the Swiss CC
  - Decision for a functional private foundation concept already in 1926



### III. Liechtenstein Foundations

#### 4. Foundation Purpose

- Principle of founder's freedom
  - Founder's freedom is an essential element of the foundation concept
  - Private foundation model which places private autonomy above the dogmatic limits of the classic foundation concept
- Determining the foundation's purpose:
  - Founder in principle free to define a purpose
  - But sufficient determination necessary: It has to indicate how the foundation's assets are used and how the beneficiaries of the foundation are determined (*cf.* OGH of 17 July 2003)
  - Determination of the foundation's purpose is an *essentialie negotii* and a personal duty of the founder himself (*cf.* § 16 para. 1 no. 4 PGR)



## III. Liechtenstein Foundations

### 4. Foundation Purpose

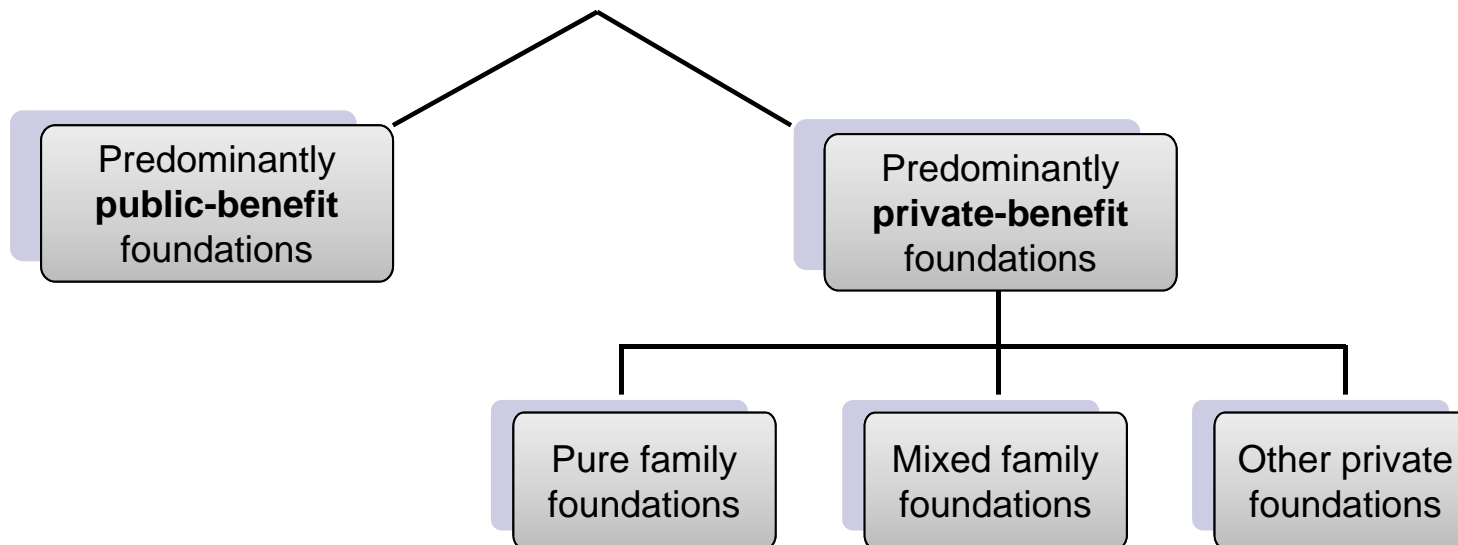
- Types of purposes
  - Public-benefit and private-benefit purposes
  - Third-party interests and self-beneficial purposes
    - «Foundation in favour of the founder» possible
    - Unconditional family foundations
    - Establishment and governance differ depending on the type of purpose (charitable or not)
- Types of foundations
  - Pure or mixed family foundations (§ 2 para. 4 no. 1 and 2 PGR)
  - Maintenance foundation permitted, but if maintenance purpose is predominant: No family foundations; effect: No enforcement privilege according to § 36 para. 1 PGR in view of beneficiaries' claims



### III. Liechtenstein Foundations

#### 4. Foundation Purpose

- Types of foundations







### III. Liechtenstein Foundations

#### 5. Characteristics of the Liechtenstein Foundation

- Separation and solidification principle with exceptions (private foundation model)
- Extensive founder's rights (*cf.* § 30 para. 1–3 PGR)
  - Right to revoke the foundation
  - Right to freely change the foundation's purpose
  - Consequences of founder's rights
    - Can influence the time of «transfer of assets» within family, inheritance or insolvency law
    - Seizure of founder's rights?
    - Effects on international tax recognition



### III. Liechtenstein Foundations

#### 5. Characteristics of the Liechtenstein Foundation

- Fiduciary establishment
  - § 4 para. 3 PGR: «If the foundation is established by an indirect representative, the principal (grantor of power) shall be deemed to be the founder. If the latter also acts as an indirect representative for a third party, the latter's principal (grantor of power) shall be deemed to be the founder. In any case, the indirect representative is obliged to disclose the person of the founder to the foundation board.»
  - Fiduciary establishment and founder's rights (§ 30 para. 3 PGR): «If the rights under para. 1 are exercised by an indirect representative (§ 4 para. 3 PGR), the legal effects shall accrue directly to the founder.»



### III. Liechtenstein Foundations

#### 6. Foundation Governance

- Foundation board: Fewer than two members
- Liability: Codification of the Business Judgement Rule (art. 182 para. 2 PGR)
- Auditor
- Rights of beneficiaries
  - Different classes of beneficiaries
  - Enforceable claims only for actual beneficiaries according to § 6 PGR
  - Control rights according to § 9 *et seq.* PGR
  - Application rights as foundation participants according to § 3 PGR (*cf.* §§ 29 para. 4, 33 para. 3, 34 para. 2, 35 para. 1 PGR)



### III. Liechtenstein Foundations

#### 6. Foundation Governance

- Charitable foundations
  - External governance: STIFA as supervisory authority (§ 29 PGR)
  - Internal governance: mandatory auditor (§ 27 PGR)
- Private foundations
  - In principle no external supervisory authority (exception: Voluntary subject to supervision, *cf.* § 29 para. 1 pp. 2 PGR)
  - Internal governance by beneficiary rights according to § 9 *et seq.* PGR
  - Exceptions to § 9 (§§ 10–12 PGR)
    - No control rights of the beneficiaries in case of a founder's right of revocation (§ 10 PGR) or a supervised foundation (§ 12 PGR)
    - Limited control rights of the beneficiaries in case of implantation of a private control organ (§ 11 PGR)



### III. Liechtenstein Foundations

#### 7. Establishment of a «Protected Cell Company» (PCC)

- Art. 243 *et seq.* PGR came into force on 1 January 2015
- Legal person consisting of a core and one or more segments (cells)
- Segments:
  - Allocation of specific assets (art. 243 para 2 PGR)
  - Submission under a specific field of activity (art. 243 para. 3 PGR)
  - No legal person itself
  - Limitation of liability towards third-parties (art. 243 *et seq.* PGR)



### III. Liechtenstein Foundations

#### 7. Establishment of a «Protected Cell Company» (PCC)

- Segmented association (protected cell company, PCC)
  - Conditions (art. 243 para. 1 PGR)
    - Mandatory or voluntary entry into commercial register
    - Pursuit of one of the purposes prescribed by law (no. 1–4)
  - Conversion (also possible for foundations), if conditions according to art. 243 para. 1 PGR are fulfilled and provided in by-laws (art. 243a para. 1 PGR)
  - Importance in particular with family assets