

LONG-TERM ESTATE PLANNING BY MEANS OF A TRUST OR FOUNDATION UNDER LIECHTENSTEIN LAW

I. STRUCTURAL POSSIBILITIES UNDER SWISS INHERITANCE LAW

The means available for estate planning under Swiss inheritance law are explicitly and exhaustively listed in the law. However, they only permit estate planning for a “short period” over one generation, or at most two generations (via the appointment of predecessors and successors). The institute of a Swiss foundation is also only suitable to a very limited extent for one’s own estate planning, since distributions can only be made if certain conditions are met (meeting the costs of education, furnishing or supporting family members; Art. 335 ZGB). According to the case law of the Federal Supreme Court, however, distributions are only permissible in the case of special needs and requirements or for the purpose of securing the existence of the family (BGE 75 II 90 f.). Thus, in particular, fixed annual maintenance allowances for family members are not permitted. The family foundation provided for in Swiss foundation law is therefore not attractive for long-term estate planning, in particular for wealthy families, due to its highly limited scope of use.

If, on the other hand, the family’s assets are to be available to the family over several generations in the long term, a trust or a foundation under Liechtenstein law is suitable for estate planning. In the following analysis, no specific distinction is made between trust and foundation, as they are similar in many respects. There are individual differences, but for the sake of simplicity, these are not addressed here.

II. BENEFITS OF A FOUNDATION OR TRUST UNDER LIECHTENSTEIN LAW

1. Long-term Safeguarding of Family Assets

Depending on the family constellation, there may be a legitimate interest in safeguarding the family’s assets over several generations. This is particularly the case if individual descendants cannot manage money, have high debts or suffer from a gambling addiction. A pending divorce can also play a role. The motives are basically based on one idea: The testator wants to ensure that his or her assets remain with the family for as long as possible.

Another aspect is the fact that when estates are divided, it is often the case that existing assets have to be divided up in order to satisfy the claims of the individual heirs. The division or sale of certain assets can lead to the asset itself losing value as a result of the division (e.g. real estate, shareholdings, art collections). By transferring these assets to a Liechtenstein foundation / trust, one protects these assets from the division.

2. Structural Versatility

Estate planning by means of a trust or a foundation under Liechtenstein law allows for a great deal of freedom in terms of structuring the estate. The testator can already determine the statutes and possible regulations during his or her lifetime. In this way, he or she can determine whether, when and, if so, under what conditions distributions are to be made to beneficiaries. Furthermore, he or she can determine which persons are to be beneficiaries in the future (e.g. only direct descendants, or also persons by marriage, or even friends of the family) and which substrate may be distributed (use of the family assets or distribution of income only).

In the case of a formation during one’s lifetime, a freely revocable trust or foundation is also conceivable. This allows the founder to dissolve the structure at any time and take back ownership of the assets. However, this arrangement is not very attractive from a tax point of view. Instead, the founder can appoint him or herself as the beneficiary and, for example, also reserve the right to amend the articles of association. This provides the founder with a far-reaching influence. Finally, he or she can also participate in the Board of Trustees or as a trustee in the trust.

For tax reasons, however, it is recommended for the Board of Trustees not to be composed of family members. On the one hand, for tax reasons, and on the other hand, so that disputes within the family are not transferred to the foundation or the trust. It is recommended that the Board of Trustees be staffed with neutral experts. A so-called protector can be created as a controlling body. Such a body can, for example, re-elect the Board of Trustees or must approve certain resolutions. The majority of the members of such a Board should also be experts.

3. Anonymity

The design and operation of the trust allows for a high degree of privacy. Inspection by third parties of the foundation’s or trust’s documents is very limited. In particular, the identity of the beneficiaries is not public information. In the case of the foundation, neither the founder has to be disclosed nor do the foundation documents have to be presented. In the case of a

trust, instead of an entry in the commercial register, a deposit can be made. Such deposited documents are only accessible to a very limited group of people.

4. Tax Advantages

The structuring of the estate planning through a foundation or a trust under Liechtenstein law can, depending on the arrangement, also bring tax advantages. Since the assets are separated from the family, the family members pay neither wealth tax nor any income tax on income. Only in the case of distributions do tax consequences arise.

Every arrangement and structuring is individual. For the tax treatment of the dedicated assets, the structuring is decisive. It is therefore recommended to involve appropriate tax advisors.

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