

Allgemeines Treuunternehmen

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Professional Secrecy in Liechtenstein's Trust Activities

1. General

Together with the special relationship of trust and confidence between the principal (client) and the mandatory (lawyer, trustee, etc), secrecy plays an important role in trust activities.

For decades now, Liechtenstein law has had numerous provisions to regulate all aspects of the protection of personal privacy. The rules derived from them for the protection of secrecy may be breached only in application of legal norms and in cases where the breach of this protection is justified in order to maintain higher interests.

The following sketch provides a general introduction to the circumstances in which the norms protecting secrecy may not apply.

The article does not go into the question of banking secrecy.

2. Duties of Professional Secrecy

The laws of Liechtenstein applying to professionals in the financial services sector (lawyers, trustees, auditors and

patent agents) all refer expressly to the obligation of confidentiality and in substantially the same terms. The obligation of confidentiality extends to all matters entrusted to the professional, as well as to all facts which become known to him in his professional capacity, in the secrecy of which the principal has a legitimate interest. The professional is entitled to insist on this duty not to disclose confidential information even in legal and administrative proceedings, due account being taken of the rules of procedure. The laws further provide that the right to secrecy must not be circumvented by official measures, such as questioning the staff of the professional or through the delivery or seizure of documents.

In principle, there should be a contractual relationship between the professional and the principal, in accordance with which the professional who is bound to secrecy carries out his services in the interest of his client. The professional will safeguard the right to secrecy in the interest of the principal/client, taking due account of the relevant rules of procedure.

3. Tax Law

The confidentiality provisions of Liechtenstein's tax law of 30 January 1961 (LGBI 7/1961 – Article 7.3) stipulate that the taxes payable by holding and domiciliary companies are subject to absolute secrecy. Liechtenstein refrains from concluding double taxation agreements with other states. Its only tax agreements are with Switzerland and Austria and these exclude holding and domiciliary companies.

4. Professional Secrecy Protected by Criminal Law

The importance which Liechtenstein's legal system attaches to due respect for the duty of professional secrecy is underlined by penal sanctions. The disclosure or unauthorised use of secrets confided to or made accessible to a professional is punishable by imprisonment for up to 6 months or a daily fine repeated up to 360 days. Such punishment is subject to the condition that the disclosure or unauthorised use of the secret will be prejudicial to a legitimate interest of the principal or a third party. The penal sanctions apply not only to

the professional himself but also to his staff and to persons in an equivalent position. These provisions ensure that the obligation of confidentiality imposed on the professional by virtue of the protection of secrecy is extended to his personnel.

5. Preservation of Professional Secrecy in Court Cases

In civil and criminal proceedings, the duty of professional secrecy comes into conflict with the duty to give evidence in court.

In civil cases, the professional can assert the right to refuse to give evidence, though the way in which the laws are formulated may vary. For example, a lawyer may claim privilege and refuse to give evidence on the grounds that facts were disclosed to him by his client in his professional capacity and so are covered by the obligation of confidentiality. In the case of other professionals, the plea of privilege may be made on the grounds that facts cannot be given in evidence without breach of the duty of professional secrecy upheld by the state. However, the possibility remains that the professional may be duly released from the obligation of confidentiality by the person who confided the secret. Such a release would also be possible in the case of a lawyer-client relationship. While the wording of the different norms may vary, there could scarcely be any other conclusion with regard to civil proceedings.

In criminal proceedings, lawyers, auditors and patent agents, as holders of professional secrets, are exempted from giving evidence on matters confid-

ed to them in their professional capacity by their clients. However, trustees do not enjoy the same exemption.

6. Preservation of Professional Secrecy in Mutual Assistance Proceedings

In the event of requests by foreign prosecuting authorities for mutual assistance, the support provided by Liechtenstein is confined to proceedings in respect of ordinary criminal offences. Liechtenstein does not provide mutual assistance in connection with tax offences. The Liechtenstein law on mutual assistance expressly provides for the protection of confidentiality and strict rules are imposed on any request for assistance. The same law stipulates that, in the execution of requests for mutual assistance, it is necessary to respect the provisions of the Liechtenstein law on privilege in criminal proceedings. More generally, it refers to all other provisions protecting secrecy in the various laws and regulations of the Principality.

In addition to the protection of secrecy, the principal may rely on various other legal means, such as the appeal process, to protect his legitimate interests.

The Introduction of the Euro in the European Monetary Union

The introduction of the euro is now entering its final phase. The European Monetary Union (EMU) or 'Euroland' will initially comprise eleven EU states.

Great Britain, Denmark, Greece and Sweden have exercised their option not to join the monetary union immediately or have not yet fulfilled the Maastricht criteria for membership.

The phases of the introduction are as follows:

1 January 1999

This date marks the start of EMU. The responsibility for monetary policy in 'Euroland' will rest with the European Central Bank. Rates of exchange between the national currencies of the participating member states will now be irrevocably fixed. The ecu is replaced by the euro on a 1:1 basis.

Transitional phase from 1 January 1999 to 31 December 2001

The national notes and coins of the eleven participating member states will continue to be legal tender.

During this period, the euro will exist only for book entry purposes and will not be available in cash form. Stock exchanges in 'Euroland' will quote and deal in euros.

1 January 2002

Introduction of euro banknotes and coins in 'Euroland'.

Transitional phase from 1 January 2002 to 30 June 2002

Euro banknotes and coins will be brought into circulation.

As of 31 December 2001, the existing bank accounts in the national currencies of the participating member states will be automatically converted into euros with effect from 1 January 2002 at the fixed rates laid down on 31 December 1998 and transferred to a euro account.

1 July 2002

The euro will now be the only legal tender in 'Euroland'. The national currencies of the participating member states will cease to be legal tender.

Effects of EMU on Liechtenstein

Through the currency treaty with Switzerland, Liechtenstein forms part of the Swiss franc zone and the Swiss franc will remain the principal national currency. Banks in Switzerland and Liechtenstein conduct electronic Swiss franc payments through their own special interbank clearing system, the SIC (Swiss Interbank Clearing). It is intended that a similar system, the Euro-SIC, should be used for electronic payments in euros. A connection to TARGET, the European interbank payment system, is

being sought through the Swiss Euro Clearing Bank (SECB), Frankfurt.

With effect from 1 January 1999, Liechtenstein banks will be ready to convert the bank accounts in national currencies of the 'Euroland' states into euro bank accounts. The elimination of the different national currencies will make it possible to reduce the costs of operating accounts. The fixed exchange rates to be applied will be specified at 11:30 on 31 December 1998. The present fluctuation bands of the national currencies in relation to the ecu should more or less anticipate the fixed rates. As far as investors in equities and bonds are concerned, it should be noted that the euro will not result in a revaluation of their securities portfolio but simply a conversion at the irrevocably fixed exchange rates. Therefore, no conversion losses are expected.

Although Liechtenstein, as a member of the European Economic Area (EEA), does not belong to EMU the introduction of the euro will have an effect on the Swiss franc zone (Switzerland and Liechtenstein). Accordingly, we would recommend that you take all necessary steps in good time and our advisers will be happy to help.

Increase in value added tax (VAT) with effect from 1 January 1999

The existing rates of VAT will be increased in both Switzerland and Liechtenstein starting on 1 January 1999, as follows:

Type of rate	Previous rate	Rate as of 1. 1. 1999
Normal	6.5%	7.5%
Reduced	2%	2.3%
Special	3%	3.5%

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